THE HON'BLE SRI JUSTICE BILAL NAZKI
THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION Nos. 9512 of 2003; 22257, 22298, 23005 and 23088 of 2004; 1082, 3679, 12958, 21356, 21357, 24962, 24972, 25661, 25662, 25663, 25664, 25665, 25666, 26148 and 26149 of 2005; 879, 880, 881, 882, 979, 980 and 981 of 2006

Date: 24-10-2006.

Between :

Yanala Malleshwari & others.

.....Petitioners

And

Ananthula Sayamma & others.

.....Respondents.

For the petitioners : S/Sri.M.R.K.Chowdary, K.Ramakrishna Reddy, N.Subba Reddy, V.Venkata Ramana, J.Prabhakar and H.Venugopal.

For the Respondents :S/Sri.Mahamood Ali, Y.Srinivasa Murthy and M.S.Ramachandra Rao.

< Gist:

> Head Note:

? CITATIONS:

1. 2004 (1) ALT 174
2. AIR 1950 ALLAHABAD 632
3. AIR 1927 ALLAHABAD 361
4. AIR 1991 AP 50
5. AIR 1974 SC 1924.
6. 12 Bom.L.R.940.
7. (2004) 8 SCC 556
8. (2003) 5 SCC 705.

9. AIR 2005 SC 3401.
10. AIR 1995 PUNJAB & HARYANA 86.
11. AIR 1966 MP 20.
12. AIR 1961 SC 787
13. 2001 (1) ALD 86

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COMMON JUDGMENT : (Per Hon'ble Justice Bilal Nazki)

This batch of writ petitions raise same question of law and fact. Facts in different writ petitions have been noted in the opinion of my brother Mr.Justice V.V.S.Rao and I will not be dealing with the facts in detail.

The question is, whether a person who sells his property and executes a sale deed and gets it registered

in terms of the Registration Act, 1908 (hereinafter referred to as 'the Registration Act'), could unilaterally cancel such sale deed and whether Sub-Registrar was bound to register such a deed. In writ petition No.14007 of 2004, the registration of cancellation of gift deed by Sub-Registrar, Karimnagar was challenged. A learned Single Judge of this Court, relying on an earlier judgment of Single Judge in **Property Association of Baptist Churches v. Sub-Registrar, Jangoan**[1], dismissed the writ petition holding that a party aggrieved by registration of a document, had to file a suit. This judgment was challenged in writ appeal No.1486 of 2004. The Division Bench considered the question whether registration of a cancellation deed could be effected by the registering authority. The Division Bench however, by its order dated 11.10.2004, affirmed the order of the learned Single Judge and dismissed the appeal. In that judgment, it was observed that the Registration Act does not enable the registering authority to make an enquiry before registering a cancellation deed. Therefore dispute, if any, between the parties, was a dispute essentially in terms of private law which could only be agitated in common law proceedings by seeking a declaration under the Specific Relief Act. Thereafter, writ petition Nos.23005 and 23088 of 2004 came up before another Judge. In these writ petitions also, registration of cancellation deeds was challenged. The learned Single Judge felt that various

legal questions were not brought to the notice of the Division Bench when it decided writ appeal No.972 of 2004 and referred the matters to another Division Bench. The Division Bench referred the matters to the Full Bench. This is the background in which these matters have come up before us.

The learned Single Judge in writ petition Nos.23005 and 23088 of 2004, was of the opinion that the law laid down by this Court in writ appeal No.1486 of 2004 was sought to be applied to sale deeds whereas registration of cancellation of gift deed was the subject matter in writ appeal No.1486 of 2004. The learned Single Judge in his reference order, observed—

> "In this regard, it needs to be noticed that a gift deed, on the one hand, and a sale deed, on the other, stand on different footing. Under Section 126 of the Transfer of Property Act, it is competent for a Donor, to suspend or revoke a gift deed, executed by him, whereas similar facility is not available, in case of a sale deed. Gift is a transfer, without any monetary consideration, whereas under a sale transaction, mutual rights and obligations exist, as between a Vendor and Vendee. Section 31 of the Specific Relief Act prescribes the manner, in which a document can be cancelled. What is required to be done through the decree of a Court, cannot be permitted to be undertaken by a party by himself."

And finally observed –

> "This Court is of the view that, if sale deeds, under which valuable properties are conveyed, are permitted to be cancelled unilaterally, it would not only result in several complications, unnecessary litigations, and hardship to the affected parties, but also bring about situations, having far-reaching implications and unrest in the Society. These aspects do not appear to have been brought to the notice of the Division Bench, which disposed of W.A.No.972 of 2004. It is felt that the matter needs to be examined either by another Division Bench, or, if necessary, by a Full Bench."

When the matter came up before the Division Bench, the Division Bench, by a very short order, referred the matter to the Full Bench as it thought that the questions raised were of public importance and the earlier Division Bench had not discussed all the issues which were involved.

My brother Mr.Justice V.V.S.Rao has written a detailed opinion and has come to a conclusion that writ petitions deserve to be dismissed. With due respects to my brother, I venture to draft an opinion which is not in conformity with the views of my brother.

M/s.M.R.K.Chowdary and K.Ramakrishna Reddy, senior Advocates and N.Subba Reddy, V.Venkata Ramana, J.Prabhakar and H.Venugopal, learned counsel,

have appeared for petitioners. The main thrust of their contentions is on the fact that the Registration Act has been enacted with a view to provide information to people, who may deal with property, as to the nature and extent of the rights, which, persons may have, affecting that property. They further contend that there would have been no need for having an Act like the Registration Act if it was not felt necessary that people should know and people should be able to find out whether any particular property with which they may be concerned, had been subjected to any liability or legal obligation. Therefore, the scheme of the Registration Act provides that one should give importance and solemnity to certain classes of documents by directing that they shall be compulsorily registerable and the general purpose of the Act appears to be to put on record somewhere the particulars of ownership of property where people can examine those particulars if they are interested in such properties. It also appears from the scheme of the Registration Act that the Act reduces the chances of fraud. It is further contended by the learned counsel for the petitioners that sale is governed by the provisions of Transfer of Property Act, 1882 (hereinafter referred to as 'the TP Act') and 'sale' is defined under Section 54 of the TP Act as, *""Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."* It further lays down that in case of such transfer, in the case of tangible

immovable property of the value of one hundred rupees and upwards, can only be made by a registered instrument, and Section 17 of the Registration Act makes a sale deed compulsorily registerable. Therefore, it is contended on behalf of petitioners that it is not the registration of the document which is sought to be cancelled by preparing cancellation deeds and getting them registered, in effect, what is sought to be done is cancellation of the sale itself, which is not permissible. Sale, by its definition in the TP Act, is a transfer of ownership in exchange of consideration, which means that there cannot be a unilateral sale. A person must be owner of the property and he should sell it to another person in exchange for a price paid or promised or part-paid or part-promised. There is no concept of a unilateral sale. Sale is always bilateral. It is true there can be many owners and many purchasers but sale is incomplete unless the document is registered, which is a requirement under Section 54 of the TP Act and also under Section 17 of the Registration Act. It is well settled that transfer of ownership means a transfer by a person of his rights and interests in the property in full and permanently. A transfer of a part only of such interests or for a particular period reserving the rest for the transferor himself is not a transfer of ownership. It has also been held by Courts that where a transfer is made for a price paid or promised and the deed is registered, a sale is duly effected and the

propriety interest in the property passes. In this connection, reference can be made to (1) **Sahadeo Singh v. Kuber Nath Lal**[2], and (2) **Kalyan v. Mt.Desrani**[3]. This Court in **Kutcherlakota Vijayalakshmi v. Radimeti Rajaratnamba**[4], even went to the extent of saying that purchaser gets title as soon as the sale deed is registered even if the consideration is not paid and it further held that the remedy for the vendor was to claim consideration.

The learned counsel for petitioners would further contend that if Section 17 of the Registration Act and Section 54 of the TP Act are read together, then the effect of registration of sale deed would be that the rights of the vendor get extinguished in the property for which he executes a sale deed and if the rights of a person are extinguished and he has no rights whatsoever left in the property, there arises no question of his executing a fresh deed cancelling the sale deed. Sale is not a unilateral act, but is a bilateral act. As a result of this bilateral act, the rights of the vendors in the property get extinguished and get transferred wholly to the vendee. Vendor is left with no rights vis-à-vis the property. Therefore, if any deed styled as 'cancellation of sale deed' is executed or registered, it would amount to fraud because, by such a deed, neither rights are extinguished nor created but has

the potential of creating a mischief. The deed of cancellation of sale deed which is duly registered by the Sub-Registrar, does not confer in law any rights to the erstwhile vendors. These documents are only executed for the purpose of creating a mischief and blackmailing the vendees. It was submitted that these documents, after registration, are presented to banking authorities and are given publicity so that the bankers and the prospective purchasers entertain doubts about the title of the land and the vendees-the bonafide purchasers, find difficulty in raising finances, using the property or transfer the property.

The argument of the other side is that the registration officer is bound to register any document, which is presented before him. He is not supposed to conduct an enquiry whether the document confers any right on the person who presents the documents for registration or who execute such a document. It is further contended that if the petitioners are aggrieved of registration of any document, the remedy available to them is to go to a civil Court and get a declaration.

In the light of these submissions, this Court will have to see whether the registration authorities are duty bound to register such sham documents. Let us now see the provisions of the Registration Act. Section 17 of the Registration Act make certain documents compulsorily

registerable. Section 18 of this Act mentions the documents, of which, registration is optional. Section 32 mentions the persons who can present the documents for registration. It lays down—

> "32. **Persons to present documents for registration**:-Except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office :-
>
> (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
> (b) by the representative or assign of such person, or
> (c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned."

Section 49 lays down—

> "49. **Effect of non-registration of documents required to be registered: --**
>
> No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882], to be registered shall,--
> (a) affect any immovable property comprised therein, or
> (b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered."

After having a glance over these provisions of the Registration Act, a glance at certain sections of the TP Act is also necessary. Section 54 has already been reproduced hereinabove.

Section 4 of the TP Act lays down—

"4. Enactments relating to contracts to be taken as part of Contract Act—The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).

[And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908)]"

'Transfer of property has been defined under Section 5 as under—

"In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons and "to transfer property" is to perform such act."

Section 8 of this Act lays down—

"8. **Operation of transfer**—Unless; a

different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

Section 53 of TP Act lays down—

"53. **<u>Fraudulent transfer</u> :--**

(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration. Nothing in this sub-section shall affect any law for the time being in force relating to insolvency. A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

The purpose of noting down these provisions of TP Act and the Registration Act is to come to a conclusion as to whether a vendor retains any interest in the property which he sold and of which a sale deed was executed

and registered. The answer is emphatic 'no'. Therefore, in my view, when a person transfers all his rights, his rights in the property get extinguished and if he tries to get back the property, it has to be done by challenging the sale deed which he has executed and which is registered by the Sub-Registrar.

Section 23 of the Indian Contract Act, 1872 (hereinafter referred to as 'the Contract Act') is applicable to the present controversy. It lays down that an agreement is void if it deviates the provisions of any law. It further lays down that consideration or object of an agreement is lawful unless it is forbidden by any law or is fraudulent or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy. Therefore, such a document, in my view, is a fraudulent document within the meaning of Section 23 of the Contract Act and as such, cannot be registered. It is even against public policy. 'Public policy' was defined by Supreme Court in **Murlidhar Agarwal v. State of Uttar Pradesh**[5]. In para 28, the Supreme Court discussed public policy vis-à-vis policy of law. Para 28 is reproduced hereunder—

> "28. The expression 'public policy' has an entirely different meaning from 'policy of the law' and one much more extensive. Nevertheless, the term 'public policy' is used by the House of Lords itself apparently as synonymous with the

policy of the law or the policy of a statute (see Hollinshead v. Hazleton, 1916 AC 428). Yet it is clearly so used without intent to repudiate or disregard the distinction so clearly drawn in Egerton v. Brownlow, (1853) 4 HLC 1 at p. 105. It seems clear that the conception of public policy is not only now quite distinct from that of the policy of law but has in fact always been so except is some exceptional instances of confusion which have had no substantial effect on the general course of authority. See W.S.M. Knight, "Public Policy in English Law", 38, Law Quarterly Rev., 207, at pp. 217-218.

In para 30 of the judgment, it defined 'public policy' on the basis of the definition of Winfield as a principle of judicial legislation or interpretation founded on the current needs of the community. Para 30 is reproduced hereunder—

30. "Public policy" has been defined by Winfield as "a principle of judicial legislation or interpretation founded on the current needs of the community". (See Percy H. Winfield, "Public Policy in English Common Law", 42 Harvard Law Rev. 76). Now, this would show that the interests of the whole public must be taken into account; but it leads in practice to the paradox that in many cases what seems to be in contemplation is the interest of one section only of the public, and a small section at that. The explanation of the paradox is that the courts must certainly weigh the interests of the whole community as well as the interests of a considerable section of it, such as tenants, for instance, as a class as in this case. If the

> decision is in their favour, it means no more than that there is nothing in their conduct which is prejudicial to the nation as a whole. Nor is the benefit of the whole community always a more tacit consideration. The courts may have to strike a balance in express terms between community interests and sectional interests. So here we are concerned with the general freedom of contract which everyone possesses as against the principle that this freedom shall not be used to subject a class, to the harassment of suits without valid or reasonable grounds. Though there is considerable support in judicial dicta for the view that courts cannot create new heads of public policy, see Gherulal Parakh v. Mahadeodas Maiya, 1959 Supp (2) SCR 406 at p. 440 = (AIR 1959 SC 781), there is also no lack of judicial authority for the view that the categories of heads of the public policy are not closed and that there remains a broad field within which courts can apply a variable notion of policy as a principle of judicial legislation or interpretation founded on the current needs of the community. See Dennis Lloyd, "Public Policy", (1953), pp. 112-113.

In para 31, the Supreme Court held that public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

One of the arguments advanced by the respondents

in this case, which has found favour with my brother Mr.Justice V.V.S. Rao, is that the remedy available to the petitioners is to go to a civil Court under the provisions of Specific Relief Act. The same argument can be used against the respondents in this case, who, if aggrieved of registration of a sale deed which they had executed, themselves should have gone to the civil Court for such a remedy. I do not agree with my learned brother that the writs are not maintainable, as the remedy to the petitioners is at common law by going to a civil Court. The effect of registration of a cancellation deed is against public policy and it will create a chaos if such deeds are allowed to be registered. The purpose of registration of a document is not only to see that the rights of the vendor are extinguished and rights of the vendee are created, but the purpose is much more than that. It has been consistently held by the Courts that the purpose of registration is to inform and give notice to the world at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice can be extended to others besides subsequent purchasers or encumbrances, as has been held in **Tatyarao Venkatrao Vase v. Puttappa Kotrappa**[6]. Therefore, the effect of registration of a sale deed is not effecting the rights of the present petitioners alone, but that registration is a notice to everybody in the

world that the property belongs to the petitioners and if such a right is violated by subsequent registration of a cancellation deed by the Sub-Registrar, it cannot be said that writ petitions are not maintainable.

If the present practice of cancelling the duly registered sale deeds as prevalent in the State of Andhra Pradesh is approved, then, the whole public policy with regard to registration of documents would get vitiated. Registered sale deeds executed duly, have some sanctity and people at large rely on them to test the title of a particular person to a particular property. If a person executes a sale deed and registers it today and then on the second day gets it cancelled, it will be simply a chaos.

The object and purpose of registering the immovable property has been discussed herein above. But we think it appropriate to end this discussion on importance and need of registration of documents relating to immovable property, by referring to a judgment of Supreme Court in **State of Himachal Pradesh v. Shivalik Agro Poly Products**[7]. In paragraphs 5 and 6 of the judgment, the Supreme Court recorded with approval, the legal position in the United States as is described in **Corpus Juris Secundum, Vol.76, page 525**. It also took note of the position in the United Kingdom as is described in **Halsbury's Laws of England, Vol.26, Paras 701 and**

705. Paragraphs 5 and 6 of the judgment are reproduced as under—

> "5. By the very nature of things recognition of rights or title over immovable property and transactions therein give rise to manifold problems. Movable property, depending upon its size or dimension, can be kept in absolute control in possession of its owner and a third party may not be in a position even to know where the same has been kept. But this is not so for an immovable property which lies in the open, attached to the earth at a particular place and the owner may be residing at a faraway place. The owner may give the property on lease or licence to someone else who may get physical possession thereof and enjoy the usufruct thereof. In order to get over this difficulty, a system of registration of title to immovable property has been evolved which is followed in many countries. In the United States the legal position has been described as under in *Corpus Juris Secundum, Vol.76, p.525:*
>
> "Systems looking toward the registration of titles to land, as distinguished from the practice under Recording Acts generally of recording or registering the evidence of such title, are in effect by virtue of statute in several of the United States, and the courts are bound by such provisions rather than by any doctrine of the common law which is in contravention thereof. These systems are quite generally known as 'Torrens

systems' and the statutes providing therefore as 'Torrens Acts' from the name of the author of the Australian Act of 1857, the underlying principle of which they follow. These systems are limited in their application to titles to lane.

The predominant object of such legislation is the establishment of a method whereby the title to a particular tract or parcel of real estate will always be ascertainable by reference to a register of conclusive veracity, maintained by the designated public official. In other words, the purpose of these laws is to simplify the transfer of real estate, and to render titles thereto safe and indefeasible through the registration of such titles, the bringing together in one place of all of the facts relative to the title to each particular tract which is registered, and the use of certificates which shall conclusively show at all times the state of such title and the person in whom it is vested. The Torrens system serves a broader purpose than merely to notify the record owner of instruments affecting the title; it is notice to all the world of the condition of the title".

6. The position in the United Kingdom has been described in *Halsbury's Laws of England, Vol. 26, paras 701 and 705* as under:

"701. *Legislation referable to centrally maintained register*—The legislation relating to registration of the

title is directed to the manner in which the law and practice of conveyancing are to be adapted to the use of a centrally maintained register of title to land. As the use of the register has been extended, so the successive statutes mark the historical development of a system of conveyancing, commonly known as registered conveyancing, which approached maturity as part of the real property legislation of 1925.

The result of that legislation, as respects registered land, is to produce on first registration a State-insured record of entitlement to legal estates in land, open to public inspection, which is to be kept up to date in respect of subsequent transactions in accordance with the conveyancing technique for which the legislation provides.

Indirect reference to the earlier legislation is found at the commencement of the Land Registration Act, 1925 in the provision that requires the Chief Land Registrar to continue to keep a register of title to freehold and leasehold land.

705. *The Land Registry Act, 1862*—The Land Registry Act, 1862 marked the first attempt to introduce registration of title as distinct from registration of deeds by memorial. Registration was on a voluntary basis and subject to conditions, which included conditions (1) that a marketable title should be shown; (2) that the

> boundaries of the land should be officially determined and defined as against adjoining owners; and (3) that partial interests should be disclosed and registered. The Act continues to apply to estates registered under it as if the Land Registration Act, 1925 had not been passed, until such time as those estates are registered pursuant to the Act of 1925. The intention that the registration of such estates is to be transferred to the modern register is confirmed by power given to the Lord Chancellor to provide by order that all titles registered under the Land Registry Act, 1862 should be registered under the Land Registration Act, 1925 without cost to the parties interested.""

To the same effect, reference can also be made to the Supreme Court judgments in **Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.**[8] and also in **State of Rajasthan v. Basant Nahata**[9].

Lastly, it was contended by the respondents that under no provision of law the Sub-Registrar is required to register a document after an enquiry as to the ownership of the property with respect to which a document is sought to be registered. It may be true that there is no such provision in the Registration Act, but if strictly interpreted, then the Registration Act would not empower the registering authority to register any document unless it

falls within Section 17 or 18 of the Registration Act. Section 17 mentions those documents which are compulsorily registerable and Section 18 mentions those documents, of which, the registration is optional, but, the whole scheme of the Registration Act shows that it is incumbent upon the Registrar not to register documents that are unlawful. Obviously if a person has no right in the property and his interests in the property had extinguished, if he tries to execute any document for the same property, the document would be illegal. If 'A' executes a document with 'B' that he would kill 'C' on payment of a consideration and if such a document is presented before the Sub-Registrar, is the Sub-Registrar duty bound to register such a document ? If 'A' executes a sale deed conveying the title of 'Charminar' or High Court for consideration, is the Sub-Registrar bound to register such a document ? Besides, in the present case, the documents themselves show that the property had already been conveyed by a registered document, therefore, no enquiry was needed to be conducted. It is only on mere reading of the document that Sub-Registrar would come to a conclusion that the document, which was sought to be registered, was an illegal document and as such could not be registered. Therefore, the argument of the learned counsel for respondents that the Sub-Registrar has no authority to make enquiries with regard to the title of the parties who executes the documents,

would have to be accepted with exceptions. That may be true, but if the document itself shows that the party who executes the document has no title over the property, the Sub-Registrar is not bound to register such a document. The scheme of the Registration Act shows that documents which create interest or extinguish interest are either compulsorily registerable or are to be registered at the option of the executor. Besides this, what is sought to be revoked by this cancellation deed, is the earlier registered sale deed. One of the documents we are taking as an example is the cancellation deed filed in writ petition No. 22257 of 2004, which reads as under—

> *"* ***CANCELLATION OF SALE DEED***
>
> *This Cancellation of Sale Deed is made and executed on this the 20th day of August, 2003 at Hyderabad – A.P., by::*
>
> *1. DR.P.S.N.MURTHI, S/o.Sri P.V.Venkat Rao, aged about 68 years, Both R/o.8-2-322, Road No.7, Banjara Hills, Hyderabad-34.*
>
> *2. SMT.P.NAGESWARAMMA, W/o.Dr.P.S.N.Murthi, aged about 64 years;*
>
> *Hereinafter called the "First party/party of the first part".*
>
> *A N D*
>
> *SRI.CH.SURENDRA REDDY, S/o.Sri Ch.Veera Reddy, aged about 42 years, R/o.Plot No.385, Road No.22, Jubilee Hills, Hyderabad – A.P.*
>
> *Hereinafter called the "Second party/party of the Second part".*
>
> *WHEREAS the party of the first part herein has executed a Registered Sale Deed in favour of the party of the Second part in respect of undivided*

share of the property bearing M.C.H.8-2-322, admeasuring 100 Sq. yards, out of total land measuring 800 Sq. yards, situated at Road No.7, Banjara Hills, Hyderabad – A.P., under a Regd. Sale Deed, Regd. As Document No.3600 of 1994, Book-I, Volume: 1612, pages: 291 to 304, dated: 30th August, 1994, Regd. at the office of the Sub-Registrar, Khairatabad, Hyderabad-A.P.

AND WHEREAS due to some un-avoidable circumstances not specific to mention hereunder the Sale Deed mentioned above executed by the Party of the First part in favour of the party of the Second part; could not be finalized for the reasons mentioned hereunder:

i. That the sale consideration was not received by the first party from the second party though the same was written as received in the principal Sale Deed.

ii. That it is hereby further declared that thephysical possession of the Schedule property still vests with the first party and the same was never delivered to the Party of the Second part;

iii. That the property was not mutated in the name of the second party/Vendee and the Municipal taxes still stand in the name of the First Party/Vendors.

NOW THIS DEED OF CANCELLATION WITNESSET AS UNDER :

1. *THAT with the execution of this deed all the rights, titles, and interests vesting with the party of the Second part shall stand REVOKED & TERMINATED and cancelled, and they shall have no claim of any kind and whatsoever nature on the schedule mentioned property.*

2. THAT the parties of the first part now with the execution of these presents shall become the

absolute owner of the schedule mentioned property and shall be entitled to enjoy, hold, use & possess the schedule mentioned property in any manner they likes.

SCHEDULE OF THE PROPERTY

All that the undivided share of the property bearing M.C.H. 8-2-322 admeasuring 100 Sq. yards, out of total land measuring 800 Sq. yards, situated at Road No.7, Banjara Hills, Hyderabad – A.P., and bounded as under::

NORTH :: Road No.3.
SOUTH :: Neighbours Property.
EAST :: Road NO.7.
WEST :: Neighbours Property.

IN WITNESS WHEREOF the party of the part herein have signed on this Deed of Cancellation of Sale deed with their own free will and consent on the day, month and year above mentioned in the presence of the following witnesses.

WITNESSES::

1.xxxxxxxxx *1. xxxxxx*
2.xxxxxxxxx *2. xxxxxx*

F I R S T P A R T Y"

In this document, it has been stated that all rights, titles and interests vesting with the party of the Second part shall stand revoked and terminated. Party of the Second part is not a party to the deed itself, whereas in the preamble of the deed it is stated that the document is executed between Dr.P.S.N.Murthi and Smt.P.Nageswaramma as the first party and Sri Ch.Surendra Reddy as the second party. The second party had not even executed this document and had not signed the document and registration of this document amounts to nullifying of earlier document registered by the Sub-Registrar and the Sub-Registrar does not have any

power whatsoever over a document, which is already registered by him. In this connection, we are fortified in our view by a Division Bench judgment of Punjab and Haryana High Court in **M/s.Ravindra Pharmaceutical Pvt. Ltd. v. State of Haryana**[10]. Since this is a small judgment, we are reproducing the whole judgment—

> "Order (Annexure P-6) issued by Sub-Registrar, Pehowa, on August 10, 1992, is challenged by the petitioner in this writ petition, as having been issued without any authority of law. The petitioner had taken a loan from the bank-respondent No.4. Subsequently the bank asked the petitioner to furnish additional security that a document was prepared and submitted to the Sub-Registrar, Pehowa, for registration. It was duly registered. Subsequently this notice (Annexure P-6) was issued, calling upon the petitioner to pay deficiency of Rs.29,000/- on the aforesaid deed.
>
> 2. On notice of motion having been issued, written statement was filed on behalf of the official respondents, inter alia, asserting that the said deed was a mortgage-deed and required more stamp duty, for which notice was issued. Maintainability of the writ petition was also disputed.
>
> 3. We have heard counsel for the parties and we are of the opinion that after a document is registered, the Sub-Registrar ceases to have jurisdiction over the matter. It

is only before registering the document that for the reasons to be recorded, the Sub-Registrar could refuse to register it under S. 71 of the Registration Act. Such an order could be appealed before the Registrar under S. 72 of the Act.

4. Apart from that, after registration of the document, the Sub-Registrar could not re-open the matter. It is entirely different as to whether the document was deficiently stamped and could be used as an evidence in a court or not. The Additional Advocate General, Haryana, referred to the provisions of Secs.31 to 35 of Indian Stamp Act to support his contention that the Collector could determine about the exact amount of stamp duty payable on a document. In our view, no help could be sought from provisions of Secs.31, 33 and 25 of the Indian Stamp Act, as the Collector has not so far taken any action under these provisions. We may observe that such an action can only be taken by the Collector if his opinion is sought by any person by producing a document as to how much stamp-duty is payable on such a document. We take it that in the facts of the present case, after registration of the document the same is with the petitioner and he has not approached the Collector for his opinion under Sec.31 of the Indian Stamp Act. No provision of law has been cited before us to chothe Sub-Registrar with power to issue notice for recovery of stamp-duty, if any, after registration of the document. While allowing the writ petition, we quash the notice Annexure P-6."

To the same effect, there is another judgment of Supreme Court in **Komal Chand v. The State of Madhya Pradesh**[11]**.** In this case, after registration of a document, the registering authority had ordered an enquiry regarding the value of the property covered by the deed. But the Supreme Court found that after registration of a document, the registering authority would become functus officio and held, *"After the registration of the 'Takseemnama' on 31st October 1956, the registering authority had no power to hold an enquiry regarding the value of the property covered by the deed and call upon the executant to pay the deficit stamp duty"*. The Supreme Court was considering this case in the light of the various provisions of Registration Act and also various provisions of the Stamp Act and it held—

> "Neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the Registering Officer registers a document presented to him for registration, the function in the performance of which the document was produced before him is over and thereafter, becomes functus officio having no power under Section 33 to impound the instrument".

The Supreme Court, while coming to this conclusion, relied on an earlier judgment in **Government of Uttar Pradesh v. Mohammad Amir Ahmad Khan**[12]. That was a case where the question arose whether the Collector had any power to impound an instrument sent to him for adjudication under Section 31 of the Stamp Act. The Supreme Court held that under that Section, the Collector had no such power, as under Section 31 of the Stamp Act, the Collector could only give his opinion as regards the duty, with which, in his judgment, the instrument was chargeable and once that duty was performed by the Collector, he would become functus officio.

By registering so-called 'Cancellation of Sale Deeds', what the Sub-Registrars are doing, in effect, is that they are cancelling the registrations made earlier and once a registration is made, the
Sub-Registrar has no power under the Registration Act to cancel such a registration, as he became a functus officio.

I am also in agreement with the judgment of a learned Single Judge of this Court in **Badugu Venkata Durga Rao v. Surneni Lakshmi**[13] that a person who has executed a sale deed and got it registered cannot subsequently execute a document unilaterally cancelling the earlier sale deed.

For the reasons stated hereinabove, all the writ petitions are allowed.

_____
(BILAL NAZKI, J)

_____
(V.V.S.RAO, J)

_____
(G.CHANDRAIAH, J)

24th October 2006

N.B:-
L.R. Copies to be marked.
(B/o)
ajr

THE HON'BLE SRI JUSTICE BILAL NAZKI
THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION Nos. 9512 of 2003; 22257, 22298, 23005 and 23088 of 2004; 1082, 3679, 12958, 21356, 21357, 24962, 24972, 25661, 25662, 25663, 25664, 25665,

25666, 26148 and 26149 of 2005; 879, 880, 881, 882, 979,

980 and 981 of 2006.

JUDGMENT OF THE COURT BY MAJORITY

The writ petitions are dismissed with no costs.

Since substantial questions of public importance are raised, leave to file appeal to Supreme Court, is granted.

_____
(BILAL NAZKI, J)

_____
(V.V.S.RAO, J)

_____
(G.CHANDRAIAH, J)

24th October 2006
ajr

THE HON'BLE SRI JUSTICE BILAL NAZKI
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25662, 25663, 25664, 25665, 25666, 26148, 26149,
24962 and 24972 of 2005; 879, 880, 881,
882, 979, 980 and 981 of 2006

Dated:24.10.2006

Between:

Yanala Malleshwari and others.

…Petitioners

and

Smt.Ananthula Sayamma and others.

…Respondents

***THE HON'BLE SRI JUSTICE BILAL NAZKI**
***THE HON'BLE SRI JUSTICE V.V.S.RAO**
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! Counsel for the Petitioners: S/Sri M.R.K.Chowdary,
K.Ramakrishna Reddy,
N.Subba Reddy, V.Venkata

Ramana, J.Prabhakar and
H.Venugopal.

^Counsel for the Respondents: S/Sri.Mahamood Ali,
Y.Srinivasa Murthy,
M.S.Ramachandra Rao.

<Gist:

>Head Note:

?Citations:

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3. AIR 1966 Madhya Pradesh 20 (FB)
4. AIR 1968 SC 1361
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6. AIR 1970 Orissa 22
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8. AIR 1995 Punjab and Haryana 86
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12. (2004) 2 SCC 150
13. 2004(4) ADL 371 (DB)
14. AIR 2005 SC 3401
15. 2006(1) LS 174
16. AIR 1966 SC 543
17. (1981) 2 SCC 246 = AIR 1980 SC 1717
18. 23 ILR 375 (Bombay)
19. 13 ILR 549 (Madras)
20. L.R., 15 I.A., 86
21. AIR 1960 Madras 1 (FB)
22. AIR 1972 Allahabad 376
23. ibid pp.497; 540
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THE HON'BLE SRI JUSTICE BILAL NAZKI
THE HON'BLE SRI JUSTICE V.V.S.RAO
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WRIT PETITION Nos. 9512 of 2003; 22298, 22257, 23005 and 23088 of 2004; 1082, 3679, 12958, 21356, 21357, 25661, 25662, 25663, 25664, 25665, 25666, 26148, 26149, 24962 and 24972 of 2005; 879, 880, 881, 882, 979, 980 and 981 of 2006

COMMON JUDGMENT: (per Hon'ble Justice V.V.S.Rao)

PART - I

INTRODUCTION

Almost a century old Registration Act, 1908, which came into force on 01.01.1909, after about fifteen amendments, has now thrown up sea-saw situation played by human ingenuity. These cases have thrown up a couple of interesting questions of law having far reaching consequences. Whether a person can nullify the sale by executing and registering a cancellation deed? Whether a registering officer, like District Registrar and/or Sub Registrar appointed by the State Government, is bound to refuse registration when a cancellation deed is presented? When cancellation deed is registered how the grievance, if any, is to be redressed in law? These and other incidental questions are required to be answered by this Full Bench.

BACKGROUND FACTS

At the outset, brief reference may be made to the pleadings, in these petitions. W.P.No.23005 of 2004* is filed by the petitioner seeking a writ of Mandamus declaring the action of the third respondent (hereafter called, Sub Registrar) in registering the deed of cancellation, dated 20.08.2003, bearing document No.2854 of 2003 executed by respondents 4 and 5. It is the case of the petitioner that her husband purchased Flat No.302 in II Floor of Ashwood Villa under a registered sale deed, dated 12.01.1994, together with undivided share in the land admeasuring 100 square yards. The same was executed by respondents 5 and 6. The petitioner took possession of the flat and allegedly invested considerable amounts on improvements. It appears there is a dispute between the builder on one side and respondents 4 and 5 on the other side, who are seeking redressal before various authorities. The petitioner also alleges that all the owners of the apartments in the Ashwood Villa formed into an association, spent money for construction of compound wall, landscaping, provision for drain water

pipes and for lighting of the stilt. It is stated that the builder contravened the sanction plan and on apprehension, the petitioner and others approached various forums for regularization of constructions. The builder with the connivance of respondents 4 and 5 (owners of the land), made constructions in deviation of the sanctioned plan. They also filed writ petition being W.P.No.8971 of 1999 for regularization. The same was disposed of by this Court directing the Commissioner, Municipal Corporation of Hyderabad, who by proceedings, dated 26.03.2004, regularized constructions. When the enquiry was pending before the Commissioner, Municipal Corporation of Hyderabad, respondents 4 and 5 produced copies of cancellation deed cancelling the registered sale deed executed in favour of the petitioner. The execution and registration of cancellation deed at the Office of the Sub Registrar is a fraud committed by respondents 3, 4 and 5 in active collusion with the officials. The cancellation deed was executed on the ground that the petitioner did not pay the sale consideration and therefore, the sale could not be completed. By the said cancellation deed, the sale deed executed in favour of the petitioner on 12.01.1994 was cancelled, which is illegal and contrary to the provisions of Registration Act and Transfer of Property Act, 1882 (TP Act).

Respondents 4 and 5 filed common counter affidavit. It is to the following effect. The dispute raised in the writ petition pertains to contractual obligation between the petitioner and respondents 4 and 5. The same is a matter to be decided by the competent civil Court. Writ jurisdiction in public law remedy cannot be invoked for resolution of private law dispute. The writ petition, is therefore, not maintainable. The Registration Act does not confer any power on registering officer to make an enquiry into infringement of rights resulting from cancellation of sale deed or any other deed. The Rules framed under the

Registration Act specifically prohibit any enquiry by the registering officer into validity of the document on the ground that the executing party had no right to execute such document. The dispute relating to cancellation of sale deeds, gift deeds etc., are in the realm of private law and requires to be adjudicated only in common law proceedings, such as a suit under the Specific Relief Act, 1963.

In W.P.No.25661 of 2005, the petitioner seeks a writ of Certiorari quashing the registered document bearing No.6119 of 2005, dated 24.10.2005, (cancellation of sale deed) and for a consequential direction to the respondents, namely, the Sub-Registrar, Deputy Registrar and one Nawab Mohammed Haji Khan, to declare the petitioner as the owner of the land covered by registered sale deed, dated 16.09.2005, bearing document No.4995 of 2005. It is the case of the petitioner that third respondent, who is the owner of land admeasuring Acs.107.00 in survey Nos.181/1 to 181/6 and 182 of Nagaram village, executed agreements of sale-cum-General Power of Attorney documents in favour of one Syed Waheed Ahmed and that he purchased the land admeasuring Acs.20.38 guntas in survey Nos.181/3 of Nagaram village under registered sale deed, dated 16.09.2005, executed by General Power of Attorney holder. The petitioner received a notice from the Sub-Registrar to the effect that the third respondent cancelled the said document by executing the deed of cancellation. On verification, he found that the Sub-Registrar made an

endorsement on the impugned cancellation deed to the effect that though unilateral cancellation is not valid in the eye of law, the document is registered under the provisions of the Registration Act and that the aggrieved can seek redressal in civil Court to get it annulled. The cancellation deed is one without authority of law and arbitration.

The third respondent filed counter affidavit opposing the writ petition. It is stated that Syed Waheed Ahmed was very well known to the third respondent, who is a nanogenarian. The former was well aware of the family properties of the third respondent. The property in survey Nos.181/1 to 181/6 and 182 belongs to two sons of the third respondent, namely, Akber Ali Khan and Farooq Ali Khan, who are Non Resident Indians. One Ghulam Rasool Faruqi and others filed suits being O.S.No.463 of 2002 and O.S.No.73 of 2004 in respect of the said land making a false claim. As he was not able to look after the Court cases, the third respondent gave General Power of Attorney to Syed Waheed Ahmed to enable him to defend the cases. It is alleged that documents executed by him are only deeds of special power of attorney, the third respondent, executed documents. But, taking advantage of the same, subsequently, Syed Waheed Ahmed, registered agreement of sale-cum-General Power of Attorney containing a clause empowering to sell the lands in Nagaram village. Having come to know this, the third

respondent registered revocation of the agreement of sale-cum-General Power of Attorney and cancelled the sale deeds executed by Syed Waheed Ahmed including the one in favour of the writ petitioner. As the document cancelling the sale deed is compulsorily registerable, so as to save innocent public from being cheated, the third respondent executed cancellation deed, which is valid and in accordance with law. Syed Waheed Ahmed was never authorised to sell the property and he was only given Power of Attorney to represent and defend the Court cases. Therefore, the sale deed obtained by the petitioner is vitiated by mischief and fraud for unlawful enrichment. Therefore, a declaration to bring to the notice of the public about the fraud, and extinguish and limit the rights of the purchaser therein was very much required. The action of the Sub-Registrar, therefore, does not suffer from any illegality or impropriety.

The case of the registering officer is as follows. The Sub-Registrar filed a common counter in most of the writ petitions. It is stated that the Office of the Sub-Registrar is accepting and registering documents of “cancellation deeds” keeping in view the decision of this Court in Writ Appeal No.972 of 2004, dated 11.10.2004, to the effect that the Registrar cannot look into validity of the document before registering the same. A reference is also made to circular Memo No.G1/4838/04, dated 17.12.2004, issued by the Commissioner and Inspector General of Registration and Stamps (the IG, for brevity) directing the registering officers to add a footnote to the effect that the cancellation deed is registered under the provisions of the Registration Act and that such unilateral cancellation is

not valid unless the deed, which is cancelled, is annulled by the competent Court. It is also stated that in terms of the Judgment of the Division Bench, the IG has taken all necessary steps for intimation to the buyers about the registration of the document to enable them to seek immediate redressal in the matter.

In W.P.Nos.879, 880, 881, 882, 979, 980 and 981 of 2006, all the petitioners purchased various extents of lands out of Acs.41.34 guntas in survey Nos.262 to 271, 272, 272/1, 273 and 274 situated Puppalguda village of Rajendranagar Mandal in Ranga Reddy District, from respondents 3 to 6. Sale deeds were executed by duly constituted General Power of Attorney holders of respondents 3 to 6. They allege that when one K.Nagi Reddy and others, including respondents 3 to 6, tried to interfere with the possession and enjoyment of the petitioners, they filed suit being O.S.No.803 of 2000 on the file of the Court of the I Additional Senior Civil Judge, Ranga Reddy District and obtained orders of *status quo.* The respondents 3 to 6 also filed a writ petition being W.P.No.15275 of 2005 seeking cancellation of the sale deeds executed in favour of the petitioners and while the same is pending, the Joint Sub-Registrar I, Ranga Reddy District, issued notice to all the petitioners separately informing that a cancellation deed cancelling the earlier sale deed is registered, and the petitioners were asked to seek redressal in a competent Court of law. Therefore, they filed the writ petition seeking a writ of Mandamus to declare the registration of deed of cancellation as illegal and without jurisdiction and for a consequential order to set aside the cancellation deed.

Respondents 3 to 6 filed a detailed counter affidavit along with applications for vacate stay. They allege that they are owners of land admeasuring Acs.51.29 situated Puppalaguda village, that they appointed M/s.P.Dilip

Kumar & Syed Nazir as Power of Attorneys to manage the property, that in respect of various extents of lands in survey Nos.263 to 270 and 273, that as GPA holders were acting in a manner detrimental to the interest of the respondents, they cancelled the General Power of Attorney vide registered cancellation deed, dated 17.05.1997, and that in spite of such cancellation, the General Power of Attorney holders sold substantial extents of lands to various persons, including the petitioners and therefore, they cancelled sale deeds on 06.01.2006, which was communicated to the petitioners. They also allege that petitioners and other purchasers obtained signatures of Mohd.Jamaluddin and Karimuddin, respondents 3 and 4, on ledger papers and created fabricated documents. The allegation that the respondents received sale consideration is denied. The writ petition is also opposed on the ground that the dispute in private law cannot be redressed in a public law remedy under Article 226 of Constitution of India. In all other writ petitions, the facts and allegations are on the same lines.

REFERENCE TO FULL BENCH

At this stage, the genesis of the reference to the Full Bench may be noticed. In W.P.No.14007 of 2004, the action of the Joint Sub-Registrar, Karimnagar, in accepting the deed of cancellation cancelling gift deed, dated 02.08.2004, was questioned. A learned single Judge of this Court placing reliance on the Judgment delivered by one of us (Justice V.V.S.Rao) in **Property Association of Baptist Churches v Sub Registrar, Jangoan**[14]

dismissed the writ petition observing that a party aggrieved by a registered document of conveyance has to file a suit seeking proper declaration. The Judgment of the learned single Judge was assailed in W.A.No.1486 of 2004, dated 11.10.2004. The Division Bench considered the question whether registering authority is duty bound to make any enquiry before registering the deed of cancellation. The Division Bench, by order dated 11.10.2004, affirmed the order of the learned single Judge and dismissed the writ appeal. It was observed that the Registration Act does not enable the registering authority to conduct enquiry before registering the cancellation deed, and therefore, the dispute lies essentially in the realm of private law, which requires to be adjudicated only in common law proceedings by seeking appropriate declaration under Specific Relief Act. Thereafter, writ petitions, being W.P.Nos.23005 and 23088 of 2004 came up before another learned single Judge, in which, cancellation deeds were challenged. The learned Judge having felt that various points were not brought to the notice of the Division Bench when it decided writ appeal No.972 of 2004 (following writ appeal No.1486 of 2004) thought it fit that the question needs to be examined by another Division Bench or, if necessary, by Full Bench. After that, the cases were listed before the Division Bench, which referred the entire matter to this Full Bench.

PART - II

SUBMISSIONS FOR PETITIONERS

M/s.M.R.K.Chowdary and K.Ramakrishna Reddy, learned senior counsel, N.Subba Reddy, V.Venkata Ramana, J.Prabhakar and H.Venugopal, learned counsel for petitioners, made elaborate submissions. The submissions can be conveniently divided into two parts. The first part of the submission is regarding the

power/jurisdiction of the registering officers to accept and register the document styled as cancellation deed cancelling the registered sale deeds. The second part is regarding the maintainability of a writ petition, which is a public law remedy.

The first part of the submissions may be summed up as follows. Except in respect of certain documents, like gift deed, the law does not enable the seller of immovable property to cancel a deed of sale/conveyance, under which, the vendor passed on the right, title and interest in the property of the purchaser/buyer of the immovable property (hereafter called, the vendee). There can be no cancellation deed extinguishing the right of the vendee at the instance of the vendor, because when once a proper conveyance deed is executed, the vendor is divested of the title and the vendee is vested with the title. The vendor cannot therefore logically, legally and validly extinguish the right and title, which do not inhere in him/her. The registering officers being public authorities have to act within the ambit of registration law and if a document does not fall under any of the categories in Sections 17 and 18 of the Registration Act, the registering officer is bound to refuse to admit the document for registration. A deed of cancellation (of sale deed) is one such species of the document, which ought to have been refused by the registering officer for registration. If the cancellation deed is considered to be a registerable document and the registering officer is permitted to register the cancellation deed, the same would be contrary to public policy.

After insertion of Section 32A by the Registration and Other Related Laws (Amendment), 2001 (Act No.48 of 2001), whenever a document relating to transfer of ownership is presented for registration, the passport size photograph and finger print of the vendor and vendee

shall have to be affixed to the document. It is the submission of the learned counsel that even when a cancellation deed is prevented, the provisions of Section 32A of Registration Act requires compliance. The registering officers have not followed this and, therefore, cancellation deeds impugned in the writ petitions cannot be allowed to stand. It is lastly contended that whether non-payment of sale consideration, whether competence of the vendor and whether identity of the property conveyed, do not render a sale transaction invalid. If the vendor desires to avoid the sale transaction, the remedy is only to seek by filing a suit for cancellation of deed as contemplated under Section 31 of the Specific Relief Act, in which event, the Court adjudicating the case shall send a copy of its decree to the Registering Officer, who registered the document, whereupon the Registering Officer shall note on the copy of the instrument contained in his books the fact of its cancellation. The Registering Officer committed gross illegality in accepting and registering the cancellation deeds.

The second part of the submission is in relation to the maintainability of the writ petitions to annul the cancellation deeds by issuing a writ in public law remedy. The learned counsel for the petitioners would urge that when any public authority acted in derogation of public policy, petition for judicial review seeking declaration that such action by public authority is illegal would be maintainable and it is not necessary for the aggrieved party to invoke the common law remedy by filing a suit. In support of the two main submissions, learned counsel placed reliance on **Muppudathi v Krishnaswami**[15], **Komal Chand v State**[16], **State of Kerala v The Cochin Chemical Refineries Ltd**[17], **Hiralal Agrawal v Rampadarath Singh**[18], **Jogi Das v Fakir Panda**[19],

Guman Singh v State[20], **M/s.Ravindra Pharmaceutical Private Limited v State of Haryana**[21], **ONGC Limited v Saw Pipes Limited**[22], **ABL International Limited v Export Credit Guarantee Corporation of India**[23] and **District Registrar and Collector v Canara Bank**[24].

SUBMISSIONS FOR RESPONDENTS

Learned counsel for the respondents, Sri Mahamood Ali (in W.P.Nos.25661 of 2005 etc.,) Sri Y.Srinivasa Murthy (in W.P.No.879 of 2006 etc.,), and Sri M.S.Ramachandra Rao (in W.P.No.22298 of 2004 etc.,) vehemently opposed the writ petitions. At the very outset, all the counsel submit that the dispute between vendor and vendee or true owner and transferee regarding the validity of a sale transaction in respect of immovable property is not amenable to writ jurisdiction as it is a private law dispute. Secondly, they would urge that in all the matters the vendees obtained sale deeds from persons, who had no valid title or authority to execute sale deeds, and from person, who played fraud on the real owners and without proper compliance with the requirements of law. These issues require recording and appreciating evidence before arriving at conclusions on the questions of fact and, therefore, writ petition is not proper remedy to adjudicate and resolve the controversy. They nextly contend that the Registering Officers are bound to register any document, which is compulsorily registerable under Section 17 of the Registration Act or which is presented before the Registering Officer as a document optionally registerable. According to the learned counsel, Section 35 of the Registration Act contemplates only two situations when the Registering Officer can refuse a registration and the scope of Section 35 cannot be enlarged by the Court, which would amount

to legislation. They urge that though under Rule 26 of the Registration Rules, the Registering Officers are entitled to examine the document, they have no judicial powers to decide the *inter se* rights of the parties to the document presented for registration or the rights of the parties who are likely to be affected by such registration. They would also urge that to decide whether cancellation of a document is valid, is essentially a function of the judiciary and any dilution of the principle would impinge the doctrine of separation of powers inherent in constitutional scheme. Judicial functions are not conferred on the Registering Officers and by judicial interpretation such power cannot be conferred on the Registering Officers. It is lastly contended that when the legislature has employed plain language, consequence of enforcement of law notwithstanding the Court cannot assume any ambiguity so as to enlarge the scope by supplying *casus omissus*, which can only be remedied by legislation. In support of these submissions, learned counsel placed reliance on **Property Association of Baptist Churches** (supra), **Union of India v S.B.Vohra**[25], **M.Varalakshmi v K.Mahadeva Sastry (died) and others**[26], **State of Rajasthan v Basant Nahata**[27] and **Kamepalli Sitaramaiah v Nalluri Krishna Mohana Rao**[28].

PART - III

We will take up the first point for consideration as indicated in the Introduction Part.

In Re Point No.1

Whether a person can nullify the sale by executing and registering a cancellation deed? Whether a registering officer, like District Registrar and/or Sub Registrar appointed by the State Government, is bound to refuse registration when a cancellation deed is presented?

A sale of immovable property is a contract, which gives an individual civil right to the buyer, if such sale is in accordance with entrenched common law principles. The Indian Contract Act, 1872, Specific Relief Act and Transfer of Property Act, essentially deal with, among others – the contract of sale. The Indian Evidence Act, the Registration Act and the Stamp Act form the trinity of procedural and adjutant law in respect of sale whereas the three Acts referred to before form the trinity of substantive law of contract of sale. A brief foray into these; relevant for the purpose - is the first step while considering the first point which arises in these cases.

TRANSFER OF PROPERTY ACT : INVALID TRANSFERS

Chapter II of TP Act contains two parts. Part-A deals with '*Transfer of property whether movable or immovable'* (Sections 5 to 34). Part-B deals with '*Transfer of immovable property'* (Sections 38 to 53-A). A transfer as defined by Section 5 of TP Act is conveyance of property by one living person to one or more living persons or to him in present or in future. Section 6 of TP Act declares that property of any kind may be transferred except the transfer of property, which is prohibited by TP Act. Clauses (a) to (h) under Section 6 of TP Act, deal with some of prohibited transfers. Clause (h) lays down that *"no transfer can be made (i) insofar as it is opposed to the nature of the interest affected thereby, or (ii) for an unlawful object, or consideration within the meaning of Section 23 of the Indian Contract Act, 1872, or (iii) to a person legally disqualified to be transferee."* Section 7 of TP Act enumerates that every person entitled to transferable property or authorized to dispose of transferred property, not his own, can transfer the property provided he is competent to do so. Section 8 of TP Act deals with 'operation of transfer'. It is to the effect that a transfer of property passes forthwith to the transferee of the interest, which the transferor is then capable of passing in the property and legal incidents thereof. When

such transfer is completed as per Sections 10 and 11 of TP Act, any restriction contained in the transfer deed disentitling the transferee from operating or disposing of his interest in the property would be void and when the interest is created absolutely in the transferee with a condition that such transferee can enjoy subject to conditions, the transferee can ignore such conditions. As per Section 4 of TP Act, all the provisions relating to contract in the TP Act shall be taken as part of the Indian Contract Act and Section 54 (Paragraphs 2 and 3), Sections 59, 107 and 123 of TP Act shall be read as supplemental to the Registration Act. At this stage, it is necessary to extract Sections 4, 5, 6(h), 7 and 8 of TP Act as under.

> **4. Enactments relating to contracts to be taken as part of Contract Act**. - The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).
>
> (And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908).
>
> **5. "Transfer of Property" defined**. - In the following sections "transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons and "to transfer property" is to perform such act.
>
> In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.
>
> **6.** (h) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object, or consideration within the meaning of Section 23 of the Indian Contract Act, 1872 (IX of 1872), or (3) to a person legally disqualified to be transferee.
>
> **7. Persons competent to transfer.-** Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances to the extent and in the manner allowed and prescribed by any law for the time being in force.
>
> **8. Operation of transfer.-** Unless a different intention is

expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

And, where the property is machinery attached to the earth the movable parts thereof;

And, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

And, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

And, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

As noticed above, chapter II contains part B as well, which deals with transfer of immovable property specifically. A brief summary of the provisions of part B of chapter II (Sections 38 to 53) is necessary. A reading of Sections 38, 41, 42, 43, 48 and 53 would show that in all cases, a sale of immovable property does not always absolutely result in transfer of property forthwith to the transferee. There is any number of exceptions to the principle adumbrated under Section 8 of the TP Act, apart from the two important conditions of the transfer, namely; “that the transferor is entitled to transfer or the transferor is authorized to dispose of the transferable property not his own”. When the transferor or a person authorized by such transferor do not have any authority either because there is no such entitlement to transfer or because there is no such authority to transfer, the remedies of the true owner entitled to transfer but who has not done so, could be many. Under Section 38 of TP Act, a person who is authorized to transfer property only under specific

conditions, but transfers the property for consideration though such conditions do not exist, as between the transferee and transferor, it is always open to the transferee to assume existence of such conditions if he has acted in good faith after taking reasonable care to ascertain the existence of circumstances. Further if an ostensible owner transfers the property with the consent of the persons interested in the immovable property, the transfer is valid and is not voidable on the ground that the transferor (ostensible owner) was not authorized to make it. That is the purport of Section 41 of TP Act. Under Section 42 of TP Act, the transferor (seller) can always reserve power to revoke the transfer and in such a case if subsequent transfer takes place with or without revocation, the subsequent transferee can always assume that in exercise of such revocation power the transferee revoked earlier transfer. Section 43 of TP Act contains the principle known as “feeding the estoppel”, which means that if a person transfers the immovable property by a fraudulent and erroneous means, and such person subsequently acquires authority to transfer, the transferee is entitled for the transfer of the ownership, if the interest is acquired during the subsistence of the contract of transfer. Here again ‘good faith’ comes to the rescue of the transferee buying the property without there being a validly vested title in the transferor. Section 53 of TP Act speaks about fraudulent transfer. It reads as under.

> **53. Fraudulent transfer.-** (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
>
> Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.
>
> Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.
>
> A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid transfer on the ground that it has been made with intent to defeat or delay the creditors of the

transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

Any transfer of immovable property made with intent to defeat or delay the creditors of the transferors, transfer made without consideration with intent to defraud a subsequent transferee are void and at the option of the subsequent transferee is voidable.

Chapter III of the TP Act contains Sections 54 to 57. All these provisions deal with “sale of immovable property”. Section 54 of TP Act defines sale as transfer of ownership in exchange for a price paid or promised, or part paid or part promised. If the value of the property is Rs.100 and upwards, sale shall have to be effected only by a registered instrument. A contract of sale of immovable property is a contract that a sale shall take place on terms settled between the parties and does not in itself create any interest in or charge of such property. Section 55 of TP Act contains the rights and liabilities of buyer or seller, which govern the sale as well as contract of a sale. As Section 55 of TP Act comes into play only when the terms of the contract are absent between the seller and buyer. If the sale is registered without there being a contract of sale to precede it, the seller and buyer are bound by the provisions in Section 55 of TP Act. Hence, it is to be concluded that as and when the immovable property is sold under registered document, the seller and buyer agree that the seller had a valid title

and the buyer was receiving the valid title under the sale. Here, it is necessary again to refer to Chapter II of TP Act to notice various situations of therebeing purported valid sale and situations where the law cannot presume the transfer of property.

Unless and until, a person is competent to contract and entitled to transfer the property, a valid transfer of property cannot take place (Sections 5 and 7 of TP Act). As a necessary corollary, if the transfer of property is by a person without title or such transfer is opposed to nature of interest or for an unlawful object or consideration within the meaning of Section 23 of the Contract Act or transferee is legally disqualified to be transferee, title in the property does not pass to the transferee (Sections 6(h) and 8 of TP Act and Section 23 of the Contract Act). In the case of transfer by a seller having improper title in him, the situation would be different. Here again, there could be different circumstances. These are (i) a person having authority to transfer immovable property only under certain circumstances, when the transferee can assume that such circumstances existed at the time of transfer (Section 38 of TP Act); (ii) a transfer of property burdened with an obligation operating as an encumbrance on the land, is valid insofar as the transferee who was not put on a notice regarding such obligation even though the beneficiary of such burden of the property in law is entitled to the benefit of an obligation arising out of contract (Sections 39 and 40 of the TP Act); (iii) If the transfer is made by an ostensible owner (who on the face of it is inferred to be authoritative transferor of property) for consideration, the transfer shall not be voidable on that ground provided the transferee has taken reasonable care to ascertain that the transferor had power to make the transfer (Section 41 of the TP Act); (iv) in a transfer of property where the seller reserves the power to revoke the transfer, the subsequent purchaser can always proceed

as if the transferor revoked earlier transfer (Section 42 of the TP Act); and (v) if a transfer takes place where the transferor had no title or imperfect title, the transferee is entitled to get all the interests which the transferor may acquire in the property subsequently provided transferee has acted in good faith for consideration without notice of the existence of the defect in the title (Section 43 of the TP Act). Apart from these situations, the transfer by a co-owner, joint owner or by a person having distinct interest in the transfer, is not rendered void and transferee in certain situations has a right to get the transfer validated. The Legislature has dealt with a variety of situations where, in a transfer, there could be passing of imperfect title. Therefore, Sections 10 and 11 of TP Act which render conditions of inalienability or conditions of non-transfer or conditions encumbering the transfer, cannot be read in isolation, they have to be read along with other provisions to which a reference is made hereinabove.

What would happen when the transfer is made by a person without any valid title? What would be the situation when a sale takes place by reason of the fraud played by the transferor and transferee, which drastically affects the person with absolute title and ownership? In situations such as these, does the law contemplate only remedy of seeking declaration or cancellation of the fraudulent transfer deed or does it enable the true owner to execute a deed nullifying the fraudulent transfer deed? When Sections 7 and 8 of TP Act contemplate that only person is competent to contract and entitled to transfer property can transfer, any other transfer (otherwise than as contemplated under Section 7 of the TP Act) must be treated as void. Likewise, if a transferee reserves power to himself to revoke the transfer, such transfer/sale is not rendered void (in view of Sections 10 and 11) but the transferor can even revoke the sale deed without going to any Court.

Before dealing further having regard to the Section 4 of the TP Act, which stipulates that the provisions of the TP Act relating to contract shall be taken as part of the Indian Contract Act, 1872, a reference need to be made to relevant provisions of the Contract Act. The Indian Contract Act is not a complete code dealing with law of contracts. Whenever the provisions of the Contract Act do not apply the principles of English Law in turn would apply. (See **Bhavandas v Girdharlal & Co.,**[29] and **Superintendence Co of India v Krishna Murgai**[30]). Be that as it is, sale of immovable property being contract, it is necessary to recapitulate the basic principles of contract. An agreement enforceable by law is a contract and agreement not enforceable by law is void, though an agreement enforceable at the option of one or more parties thereto becomes voidable. All agreements become contracts when there is a valid proposal and reciprocal acceptance of the proposal agreeing with the conditions subject to which one party makes the proposal and the other party accepts such proposal. A person who is of sound mind and who is not disqualified by any law is alone competent to contract. Sections 13, 14, 15, 16, 17, 18 and 19 of Contract Act define and explain the terms often used in the law of contract, namely, “consent”, “free consent”, “coercion”, “undue influence, “fraud” and “misrepresentation” respectively. Sections 20, 24 to 30 describe the agreements/contracts, which are void. These are: (a) where both parties to an agreement are under a mistake as to the matter of fact essential to the agreement; (b) if the consideration and object of a contract is unlawful[31]; (c) an agreement without consideration is void subject to certain exceptions contained in Section 25; (d) agreement in restraint of marriage of a person other than a minor; (e) an agreement restraining the other from exercising a lawful profession, trade or business; (f) an

agreement which restrains other party from enforcing the rights by taking legal proceedings in the Courts/Tribunals and (g) agreements by way of wager and agreement the meaning of which is not certain or capable of being made certain. Chapter IV of the Contract Act deals with the contracts, which must be performed. This chapter contains provisions regarding the contracts to be performed, by whom to be performed, time and place for performance, performance of reciprocal promises and appropriation of payments and contracts which need not be performed. Section 65 of the Contract Act lays down that when a contract becomes void, any person who has received any advantage under such contract is bound to restore it to the person from whom it was received. These principles cannot be ignored while dealing with the transfer of property, which is void for any of the reasons noticed hereinabove.

SPECIFIC RELIEF ACT : SUIT FOR CANCELLATION OF DEED

That a void or voidable instrument of transfer or instrument governing the relations between two or more persons, cannot be enforced, is recognized in common law. Under Section 17 of Specific Relief Act, a contract to sell any immovable property cannot be specifically enforced in favour of vendor, who knowing himself not to have any title to the property has contracted to sell the property. Similarly, when vendor enters into contract believing that he had a good title to the property but cannot at the time fixed by the parties give the purchaser the title free from reasonable doubt, the same cannot be enforced. Whether a person who suffers injury by reason of such void instrument has to necessarily seek cancellation of such instrument? Is it necessary that a person who suffers injury by reason of transfer of immovable property (contract), which is between two persons in respect of his own property and which is void on the face of it for the reason that the vendor of the said transaction has no authority to transfer the property to the

vendee, to file a suit? Can he not execute and register a deed cancelling the offending sale deed?

The above queries need consideration of two aspects. When a suit for cancellation of an instrument/deed or document is maintainable? When such a suit at the instance of original owner is not maintainable and what are the other remedies to such a person? Sections 31 and 34 of Specific Relief Act are relevant and read as under.

> **31. When cancellation may be ordered:-** (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
>
> (2) If the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.
>
> **34. Discretion of Court as to declaration of status or right:-** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
>
> *Explanation:-* A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.

It is a misconception that in every situation, a person who suffers injury by reason of a document can file a suit for cancellation of such written statement. Two conditions must exist before one invokes Section 31 of Specific Relief Act. These are: the written instrument is void or voidable against such person; and such person must have reasonable apprehension that such instrument if left

outstanding may cause him serious injury. Insofar as Section 34 of the Specific Relief Act is concerned, it is no doubt true that a person entitled to any right as to any property can seek declaration that he is so entitled to such right. Here again, the person who claims the right to property can institute a declaration suit only when the defendant denies or interested to deny the title of the plaintiff. The difference between the two situations is glaring. In one case, cancellation of deed can be sought in a Court only by a person who executed document and who perceives that such document is void or voidable. In the other case, even if a person is not a party to the document, he can maintain a suit for declaration.

In **Kotrabassappaya v Chenvirappaya**[32], dealing with Section 39 of Specific Relief Act, 1877 (which is now Section 31 of the 1963 Act), a Division Bench of Bombay High Court interpreted the provision as enabling only the person who parted with the property under an instrument maintain an action for cancellation of the deed. It was held:

> Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it cancelled. The test is "reasonable apprehension of serious injury". Whether that exists or not, depends upon the circumstances of each case. It cannot be laid down, as a rule of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled.

In **Iyyappa v Ramalakshmamma**[33], the Madras Division Bench laid down that a suit for cancellation of an instrument will be maintainable only by the person who executed the document. In that case, the suit was brought alleging that the defendant forged the sale deed in the name of the plaintiff as executant and alternatively if it was in fact executed by the plaintiff the execution had

been obtained by fraud and no consideration had passed upon him. The Court held that if the plaintiff did not execute the document and it was forgery, the suit for cancellation is not maintainable and if the sale consideration was not paid, the action should be for payment of money and not for cancellation of the document. The relevant observations are as under.

> Seeing that the suit is, for reasons already mentioned, not maintainable, we do not desire to express any opinion on these questions of fact. But assuming that the Judge's findings are right, we must observe that the suit ought to have been dismissed. The gist of the plaintiff's charge against the defendant was that she never had executed a sale deed in his favour, and that the document set up by him was a forgery. It was not competent to the plaintiff to combine with this charge as an alternative the wholly inconsistent charge that, if she did execute the document, no consideration was received by her, or that fraud was practiced upon her (See Mahomed Buksh Khan v Hosseini Bibi[34]). For this reason the second issue was, we think, as improper one, and it is further open to the objection that, assuming that the document was executed, but that the consideration did not pass, the relief prayed for in this suit could not have been granted. It is obvious that in case of default in payment of consideration the vendor's right is not to have the sale deed cancelled and delivered up, but to have the money paid to him by the purchaser.

A Full Bench of Madras High Court in **Muppudathi v Krishnaswami**[35] considered the scope of Sections 39 and 41 of Specific Relief Act, 1877 (which are now Sections 31 and 33 of 1963 Act). The principle entrenched in Section 39 was explained thus:

> The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under S.39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. **A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared.**

> Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in *quia timet* actions.
>
> (emphasis supplied)

It was further laid down as under.

> The provisions of S.39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument: (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (3) in the circumstances of the case, the Court considers it proper to grant this relief of preventive justice. On the third aspect of the question the English and American authorities hold that where the document is void on its face the court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the court.
>
> The question that has to be considered depends on the first and second conditions set out above. **As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasizes that principle. For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus relief under S.39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.**
>
> (emphasis supplied)

The Full Bench of Madras High Court noticed that when the instrument/document is not executed by the plaintiff, the same does not create a cloud upon the title of the true owner nor does it create apprehension that it may be a source of danger. Accordingly, a suit for cancellation of instrument by a person who did not execute the document would not lie. However, there could be cases where instruments are executed or purported to be executed by a party or by any person who can bind him in certain circumstances. As pointed out by the Madras High Court, these are: a party executing the document or

principal in respect of a document executed by his agent, or a minor in respect of document executed by his guardian *de jure* or *de facto*, the reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by a benamidar. In these cases, though the party may not have executed document, if those are allowed to stand, it may become a potential source of mischief and danger to the title and a suit would, therefore, be maintainable for cancellation of such document. When the document itself is not executed by the plaintiff, there is no necessity to have the document cancelled by a Court decree, for it has no effect on the title of true owner.

In **Debi Prasad v Maika**[36], a learned single Judge of Allahabad High Court placing reliance on Full Bench decision of Madras High Court in **Muppudathi** (supra), observed as under.

> In all these cases there is no question of a document by a stranger to the title as in the present case and it can further be found that in all such cases a reasonable apprehension can be entertained that if such an instrument is left outstanding the same may cause the plaintiff serious injury. In the present case, it cannot be successfully maintained that a reasonable apprehension can be entertained by the plaintiffs that if the sale-deed is left outstanding it may cast a cloud upon their title or cause them serious injury because the cloud upon their title will not be removed merely by a decree for cancellation of the instrument. The cloud will continue to hang over the plaintiffs by the hostitle assertion of title by the executant of the sale-deed and those who claim a title to it. Therefore, the proper relief for the plaintiffs to seek in a case

of this kind is a declaration of their own title or a declaration that the executant of the sale-deed in dispute has no title to the property.

The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner.

PUBLIC POLICY IS BREACHED OR NOT

The discussion thus far would show that even in the matter of transfer of immovable property, there could be two situations. One, where the owner himself executes a registered transfer deed, but later feels that such instrument is void or voidable for any of the reasons as per TP Act or Contract Act. The second situation is where the true owner never executed transfer deed but such transfer (transaction) materialized between two strangers one impersonating vendor and another as vendee, where there is a possibility to presume fraud in the transaction. Conveyance to deny creditors their due is another species of fraud. In at least fifty per cent of this batch of

cases, there are allegations by alleged true owners that the registered sale deeds were brought into existence by playing fraud by persons who had no such authority and who are not entitled to transfer the immovable property. There are also cases where allegation of non-payment of sale consideration is made. Insofar as first category of cases is concerned, the second point for consideration would cover the same. The ensuing discussion is regarding second category of cases.

The purchaser of immovable property can get the title that is passed on under the deed of conveyance by the vendor. If the title passed on is defective, the law gives the option to the purchaser to avoid such sale and sue for recovery of consideration and/or damages for breach and misrepresentation. In a situation there could also be a criminal charge against the spurious vendor for cheating under Indian Penal Code, 1860. Even in a case where the vendor has no title at all but the purchaser was made to believe that what is passed on is a valid title in the property demised under the instrument, the vendee has remedy in civil law as well as criminal law. This remedy, however, is not available to a purchaser who is negligent in not inspecting the title of the vendor and who does not insist upon such covenant or warranty. The principle of *caveat emptor* (let the purchaser beware), however, has no application if vendor has practised fraud to induce the purchaser to accept the offer of sale[37]. In case of fraud, the vendor cannot maintain any action against the purchaser. The legal maxim '*ex dolo malo non oritur actio'* applies and the vendor who knowingly committed an act declared by the law to be criminal cannot maintain action against the purchaser who refuses to take the title conveyed under the deed. The maxim

'*dolus malus*' vitiates all transactions effected by fraud[38]. Insofar as the buyer is concerned, as observed by Herbert Broom in his compilation of Legal Maxims (p.540), he may abide by the contract induced by fraud and bring an action for deceit (i.e., cheating in Indian law), for the damages sustained by the fraud. The buyer may also rescind the contract returning the goods if already accepted and recover the price paid.

What would be the remedy for the person who actually and factually holds a valid title to a property in respect of which a fraudulent transfer was effected by deceitful vendors and vendees or deceitful vendors and genuine vendees, who parted with consideration. The legal maxims '*nemo dat quod non habet*' and *'nemo plus juris ad alium transferre potest quam ipse habet'* postulate that where property is sold by a person who is not the owner and who does not sell under the authority or consent of the real owner, the buyer acquires no title to the property than the seller had. The Indian law recognizes this principle in various provisions of various statutes which in pith and substance deal with Contracts, Transfer of property and Specific relief (See Sections 17, 18, 19, 20, 23, 25 and 29 of the Contract Act; Sections 6(h), 7, 25, 38, 42 to 48, 52, 53 and 55 of TP Act and Sections 13, 15, 17, 21, 31 and 34 of the Specific Relief Act). Dealing with this aspect of the matter, one of us (Justice V.V.S.Rao) in A.K.Lakshmipathy (died) by LR v R.S.Pannalal Hiralal Lahoti Charitable Trust[39]**, after making reference to Section 55 of TP Act and Section 13 of Specific Relief Act pointed out the following remedies for the transferees under fraudulent sale contracts or transfer vitiated by fraud.**

i) Where the seller transfers the property with imperfect title and subsequently acquires interest in the property, the buyer has a right to compel the vendor to make good the contract out of such interest; if necessary by

compelling concurrence of other persons. Section 18 of the Specific Relief Act, 1877 except for minor variations is in *pari materia* with Section 13 of the New Act. The Courts have held that a defect of title is one which exposes the purchaser to adverse claims to the land and have pointed out (a) restrictive covenants, (b) encumbrances, (c) liable for the property to be satisfactorily acquired, (d) existence of partition decree allotting a portion to the co-sharer, (e) title being voidable at the option of third party and (f) the absence of concurrence of persons whose consent is necessary to validate the transfer as defects of title.

ii) The second situation deals with a case of mortgage. When the vendor sells mortgaged property professing the same to be unencumbered, the purchaser has a right to compel the vendor to redeem the mortgage, obtain valid discharge and also ask for conveyance from the mortgagee of the property.

iii) In a case where the specific performance of contract cannot be enforced and the suit is dismissed by the Court on a ground of want of title or imperfect title, the buyer has a right to the return of the deposit with interest thereon and shall also have a lien in the property to the extent of the deposit, interest and costs of the suit.

The position of transferee under a fraudulent instrument of conveyance is different from the true owner of the title to the property in question. Section 31 of the Specific Relief Act provides one remedy, namely, cancellation of the instrument by showing to the Court that such instrument is void or voidable and that if such instrument is allowed to outstanding, it would cause serious injury. The injury referred to in Section 31 need not be with reference to the person i.e., the true owner of the title, but can as well encompass the property involved. Indeed, sub-section (2) of Section 31 of the Specific Relief Act requires the Court trying a suit for cancellation of instrument to send a copy of the decree to

the registering officer, who shall note on the copy of the instrument contained in the books of registration the fact of its cancellation. This would only show that the law is anxious to protect the title to the immovable property from all deceitful encumbrances. Should there be a fraudulent transfer or a transfer vitiated by misrepresentation and collusion between two unconcerned persons, does the law expects the true owner to file a suit only under Section 31 of the Specific Relief Act or to file a suit for declaration of his title again and again? That in all cases, the true owner of the immovable property cannot seek the remedy of cancellation under Section 31 is already discussed supra. If a person has enjoyed the property as a true owner for considerable length of time, merely because there is a fraudulent transfer of his property, by one incompetent person to another person, should we compel the true owner to file a suit for declaration of title again and again? Does it not render the registration of the transfer of title, which he had obtained much earlier, useless, unfruitful and meaningless? Whether the present dispensation of law is in such ineffective state containing vacuum or is it the duty of this Court to interpret the existing statute law taking into consideration the phenomenal changes in the society and also fast changing values in the society to mould the existing policy in statute law so as to render fraudulent transfers ineffective without recourse to common law remedy?

No society can claim to adhere to stereotyped static norms, mores and code of conduct. No democratic Government can make a policy to last infinitely. The policy governing regulated social and economic human activity must continuously change. Without such continuous change, the reforms – social, political and economic; are meaningless. What is good in one age may become detestible in another age. One political philosophy replaces the other and an ever ending human endeavour to put thinking process influenced by socio-cultural fusion among human beings throws up different political philosophies in different ages. The curial exercise by the law Tribunals cannot remain inert or non-responsive to these changes. While laying down a judicial policy acceptable to all, the Court has to innovate new procedures of interpretation and invent new remedies to keep the scales of justice even. A myopic view of law and its influences may result in amelioration lasting for a short period. Long term solutions can be found only when the Courts act with vision with longer perspective.

Justice K.K.Mathew in **Murlidhar Agarwal v State of U.P.**[40], describes public policy as an unruly horse. His Lordship referred not only to public policy but also the policy of law. He observed that public policy must take into consideration the interest of all sections of the public ignoring the small section of the public who might be

benefited by such an interpretation, which ignores the large sections of the public. His Lordship further held that public policy does not remain static in any given community. It may vary from generation to generation and may differ in the same generation, and public policy would be useless if it remains in fixed moulds for all time. It was also observed as under.

> The courts may have to strike a balance in express terms between community interests and sectional interests. So, here we are concerned with the general freedom of contract which everyone possesses as against the principle that this freedom shall not be used to subject a class, to the harassment of suits without valid or reasonable grounds.

Yet again it was observed:

> If it is variable, if it depends on the welfare of the community at any given time, how are the courts to ascertain it? The judges are more to be trusted as interpreters of the law than as expounders of public policy. However, there is no alternative under our system but to vest this power with judges. The difficulty of discovering what public policy is at any given moment certainly does not absolve the judges from the duty of doing so. In conducting an enquiry, as already stated, judges are not hide bound by precedent. The judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction he must cast his gaze. **The judges are to base their decision on the opinions of men of world, as distinguished from opinions based on legal learning. In other words, the judges will have to look beyond the jurisprudence and that in so doing, they must consult nor their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results. Of course, it is not to be expected that men of the world are to be subpoenaed as expert witnesses in the trial of every action raising a question of public policy. It is not open to the judges to make a sort of referendum or hear evidence or conduct an inquiry as to the prevailing moral concept. Such an extended extra-judicial enquiry is wholly outside the tradition of courts where the tendency**

is to 'trust the judge to be a typical representative of his day and generation'. Our law-relies, on the implied insight of the judge on such matters. It is the judges themselves, assisted by the bar, who here represent the highest common factor of public sentiment and intelligence.

(emphasis supplied)

I n **ONGC Limited** (supra), it was opined that the principles governing public policy must be capable of expansion or modification. Practices, which are considered perfectly normal at one time have today become obnoxious and oppressed to public conscious. It was further opined that if there is no rationale public policy, then the Court must in consonance with the public conscious, with public good and public interest, declare such practice to be opposed public policy and that the Courts have to bear in mind the principles contained in the preamble to the Constitution of India. When the precedents are lacking, the Court can always be guided by principles underlying the fundamental rights and directive principles enshrined in our Constitution of India. The Court, further, observed that the term 'public policy' is required to be interpreted in the context of the jurisdiction of the Court and giving a wider meaning to prevent patently illegal results.

After giving our anxious consideration to these questions, we are of the opinion that the existing law is still effective to come to the rescue of the true owner of the immovable property to take steps rendering fraudulent transactions of transfer between two strangers to the

property ineffective. Some more reasons for this conclusion are discussed in part IV of this Judgment.

PART - IV

It is a misconception to assume that whenever there is an instrument evidencing transfer of immovable property, a person has to seek a decree for cancellation of such instrument. This remedy has its own limitations. It is also a misconception to assume that the owner of the property cannot seek cancellation of an instrument or sale deed, which in some way affects his own right, on the principle that the transfer of property divests the rightful owner of the property.

The rule is *nemo dat quod non habet;* no one can give what he does not have. Thus, if a person has a right in the property and some one else transfers it without the consent of the owner, the right in that property still continue to subsist in the true owner and the transfer has no effect on such title. The person is still the owner of the property. Indeed, the very concept of title is excisability against the third parties. A property right is a right in rem and therefore, will not be destroyed even if right comes into hands of a third party under a fraudulent transfer. In common law, there is no exception to the rule *nemo dat* in favour of all persons, who allegedly purchased in good faith for value. Even an innocent bonafide purchaser will be bound by the pre-existing common law property rights in the land. As we presently show the registration of a

transfer deed, which is illegal, fraudulent, obtained by coersion and misrepresentation are no exceptions to these settled rules of right to property. This reiteration of common law principles leads to one thing i.e., the person who has a title to the property and the person who continues to enjoy such right can always take such steps available in law to remove the encumbrances on the property and to evict trespassers by resorting to remedies in civil law, criminal law and seeking redressal before appropriate administrative and statutory authorities.

REGISTRATION LAW

The Stamp Act, 1899 and the Registration Act, 1908 are not *in pari materia* legislations. The former is a fiscal enactment referable to the taxing powers of the State whereas the latter is a regulatory enactment in exercise of police powers of the State. Even while interpreting the provisions of the Registration Act, this distinction cannot be ignored. Registration Act is a pre Constitution enactment made by British Parliament and adopted by India by Adoptation Order, 1937. Any interpretation of any of its provision must also satisfy the constitutional provisions and in case of conflict, the provisions of Registration Act have to yield to Constitution of India. As seen from the statement of objects and reasons appended to the Registration bill, it consolidated seven enactments relating to registration of documents. Before

1908, registration system envisaged optional registration but in 18th century, it was felt that registration of certain documents of transactions should be made compulsory so as to avoid conflicts in relation to various transactions. The purpose was to assure people that if a document evidencing transaction or conveyance is registered, no one can claim any interest by creating a forged or sham document. In **Hemanta Kumari v Zemindari Co**[41]., and **Tilakdhari Lal v Khedan Lal**[42], the Judicial Committee observed that, the object of registering a document is to give notice to the world that a document has been executed to prevent fraud and forgery and to secure a reliable and complete account of all transactions effecting the title to the property. In the latter decision, it was also observed that so as to classify as a valid document, such document should be registered strictly complying with the provisions of the Registration Act. Therefore, the purpose of giving information to people who deal with the property as to nature and extent of rights which might be affected in relation to property, can be achieved by maintaining the solemnity of transactions among the people and giving due importance to ethics.

The Registration Act contains fifteen Parts or Chapters.

Part I contains the definitions clause and part II deals with “Registration Establishment” i.e., administration,

management and organization of the registration department. Whether it is IG or Registrars and Registrars of the Districts and Sub Districts (for the purpose of Registration), all of them are appointed by the State Government. Part XI deals with duties and powers of the registering officers and the method of registration of the documents presented for registration. Part XII deals with the powers of the registering officers to refuse registration and the remedies there for. Part III contains the provisions dealing with the registerable documents and parts IV to IX deal with procedure for method and manner of presenting the documents and registration as such. Part X describes the effects of registration and non-registration.

As the submissions in support of the writ petitions revolve round the powers of the registering officers, it is necessary to deal with part III (of registerable documents) and parts XI and XII (of the duties and powers of the registering officers) in some detail. It may also be noted that Section 69 of the Registration Act confers the power of general superintendence on IG, over all the registration offices in the territories in the State, and also confers powers to make Rules consistent with the Registration Act. In exercise of such powers, the IG has made Rules known as A.P.Rules under the Registration Act (hereafter called, the Rules).

INTERPRETATION OF SECTION 17 OF REGISTRATION ACT

Part III of the Registration Act contains Sections 17

to 22. Section 17 enumerates documents, which are compulsorily registerable and Section 18 deals with document of which registration is optional. Section 17(1) as amended by A.P.State Legislature from time to time reads as under.

> **17. Documents of which registration is compulsory:-** (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-
>
> (a) instruments of gift of immovable property;
> (b) **other non-testamentary instruments which purport or operate to create, assign, limit or extinguish, whether in present or in future; any right, title or interest, whether vested or contingent, of the value** of one hundred rupees and upwards, to or in immovable property;
> (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
> (d) leases of immovable property;
> (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property;
> (f) any decree or order or award or a copy thereof passed by a civil Court, on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under Section 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and
> (g) agreement of sale of immovable property of the

value of the one hundred rupees and upwards:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

(emphasis supplied)

Sub-section (2) of Section 17 of the Registration Act is by way of an exception to Section 17(1)(b) and (c) and therefore, the same need not be read here. Section 18 enumerates documents, which could be registered at the option of the parties. As per Section 18 (f), other documents not required by Section 17 to be registered can also be registered at the option of the parties. For ready reference, Section 18 is extracted as under.

18. Documents of which registration is optional:-

Any of the following documents may be registered under this Act, namely:-

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction, of any such right, title or interest;

(c) xxxx

(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or

extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in immovable property;

(e) wills; and

(f) all other documents not required by Section 17 to be registered.

There is no dispute that a sale deed under which immovable property is transferred by one person to another person falls under Section 17(1)(b) of the Registration Act. As already noticed supra, under Section 54 of TP Act, transfer of ownership in immovable property (sale) can only be made by a registered instrument, and therefore, the interpretation of Section 17(1)(b) is important in the context. The contention of some of the learned counsel for the petitioners is that the sale of immovable property under registered document being absolute, the vendor who is divested of title by reason of transfer to the vendee cannot again execute another deed nullifying the earlier one. Section 17(1)(b) deals with non-testamentary instruments other than instruments of gift. Any instrument which purport to create or operate to create, declare, assign, limit or extinguish any right, title or interest any immovable property of the value of Rs.100/- and upwards requires compulsory registration or else under Section 49(c), such instruments, cannot be received as evidence of any transaction effecting such property. A careful reading of Section 17(1)(b) of Registration Act does not support the interpretation placed by the learned counsel for the petitioners. We shall deal with this now. For this purpose, it is necessary to notice the meaning of the word 'purport' or the meaning of 'purport to create', 'declare' etc.

The word 'purport' is not defined in the Registration Act or any other statute dealing with transfer of property. In Black's Law Dictionary[43], the word 'purport' is defined

as under.

> Purport – Meaning, import, substantial meaning; substance; legal effect. The "purport" of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from "tenor", which means an exact copy.
>
> Purport – To convey, imply, or profess outwardly; to have the appearance of being, intending, claiming.

In Words and Phrases (permanent edition)[44] the words 'purport', 'purported' and 'purported to convey' are explained as under.

> **PURPORT**
>
> The "purport" of a written instrument is usually its meaning; what it intends to show, what is apparent; what it shows on its face.
>
> "Purport" means the substance of an instrument, as it appears on the face of it to every eye that reads it, and "tenor" means an exact copy of it; and, where an instrument is stated according to its tenor, the purport of it must necessarily appear.
>
> **PURPORTED**
>
> Implication of word "purported" is that something is deficient or amiss; everything is not as it is intended to be.
>
> **PURPORT TO CONVEY**
>
> Where deed recited that it was held by grantor subject to any change grantor might make prior to death, and grantor did not actually deliver the deed, but his wife, the grantee, took it form his private papers after death and claimed title, the deed did not "purport to convey" the land within terms of statute governing adverse possession in favor of persons claiming under instruments "purporting to convey".

In LAW LEXICON[45], the word 'purport' is defined as under.

> Purport. The word "purport", as used in speaking of the purport of an instrument, means the substance thereof as it appears on the face thereof to every eye that reads it.
>
> Purport imports what appears on the face of the instrument. It is usually intended to express the substance and effect as appears from the face of the instrument, in distinction from 'tenor', which means a copy or exactness.
>
> Purport means the design or tendency, the meaning or

> import when used in the expression, "An instrument purports."
>
> An instrument purports to be a particular instrument which it more or less resembles and this definition applies to a part, as well as the whole, of an instrument.
>
> The purport of an instrument means the substance of it, as it appears on the face of it, in the eyes of all who read it.
>
> "An instrument purports to be that which, on the face of the instrument, it more or less accurately resembles. The definition of purporting is the same whether applicable to the whole or to a part of an instrument. There must be a resemblance more or less accurate".

Section 73 of the Indian Evidence Act is to the effect that in order to ascertain whether the signature is that of a person by whom it purports to have been made, the same can be proved to the satisfaction of the Court by comparison of the signature with the one which is admitted or approved. The term 'purports' appearing in Section 73 of the Evidence Act fell for consideration before a Division Bench of Bombay High Court in **Emperor v Ganpat Balkrishna Rode**[46]. The Court referred to an earlier Judgment of Calcutta High Court in **Barindra Kumar Ghose v Emperor**[47] and held that the word 'purports' is used in the sense 'alleged'. The relevant plasitum in the Judgment is as follows.

> …And in the Calcutta judgment, the words "by whom it purports to have been written or made" have been construed to mean that the writing which is in dispute must itself in terms express or indicate that it was written by the person to whom the writing is attributed. **One meaning of the word "purports" as given by Murray in his Dictionary, is "alleged," and, therefore, it is reasonable to construe these words to mean "by whom it is alleged to have been written or made."** Or even if we take the word "purports" in the sense which is generally attributed to it, we may say that when an anonymous writing is produced and ascribed by the prosecution to a particular person, then the case for the prosecution must be taken to be that, having regard to the admitted documents, and the disputed writing, the prosecution alleged that the disputed document purports to have been written or made by the accused…
>
> (emphasis supplied)

Section 17(1)(b) of the Registration Act is so broadly

worded that any non-testamentary instrument, which either creates or assigns right, title and interest or allegedly does so can be registered. Such a broad language was used by the legislature to see that any document of transfer of immovable property does not escape the compulsory registration. Therefore, in the considered opinion of this court, wherever a deed of transfer is registered under which a right, title and interest is assigned or transferred, the same need not always be conclusively taken to be a legal and valid transfer of title. Every sale deed must be treated as non-testamentary instrument, which purports to transfer. This interpretation is also supported by Section 18(a), which is to the effect that all instruments other than instruments of gifts and wills which purport to or create or assign right, title or interest in property of less than Rs.100/- can be registered at the option of the parties. If Section 17(1)(b) is interpreted as dealing with all documents, which absolutely transfer the right, title and interest, the provisions of Sections 31 and 34 of the Specific Relief Act would be rendered otiose. Such an interpretation has to be avoided. Therefore, this Court must conclude that whenever sale deed is registered by one person in favour of the other person, the vendor can still has locus to question such sale deed under which the title is transferred or purportedly (allegedly) transferred. A document on the face of it, may appear to be sale deed evidencing transfer of property, but for reasons more than one; it may be a void document.

DUTY AND POWER OF REGISTERING OFFICERS

At this juncture, it is necessary to consider the powers of the registering officers in discharge of their duties under the Registration Act, to know whether it is mandatory for the registering officers to accept and admit every document presented in any form for registration or

whether it is permissible for the registering officers to refuse registration and is it permissible to cancel the registration. Sections 19, 20, 21 and 22 of the Registration Act describe certain situations in which the registering officer can refuse registration. These are: when the document is in a language not understood by the officer, the documents with blanks, eraser, alteration etc., the documents without description of the property sufficient to identify the same and the documents which are presented for registration beyond four months from the date of execution. Under Section 32, when a document is presented by some person other than the person who executed the document, the registration can be refused and similarly under Section 35, the registering officer should be satisfied that the document presented for registration is in fact executed by the person, who appears before him and admits the execution. But, registration can be refused when the person by whom the document purported to be executed denies execution or the person, who purportedly executed is dead. Be it noted that by reason of the effect of Section 17 and 18, all documents whether compulsorily registerable or optionally offered for registration can be accepted for registration by the registering officer subject to the limitations contained in the provisions referred to hereinabove.

When a document is presented for registration, it should contain the photographs and fingerprints affixed as

per Section 32A (if it is a sale deed, the photographs and fingerprints of the buyer and seller must be affixed). After receiving the document, the registering officer has to verify/examine a document with reference to Sections 19 to 22, 32 and 35. The registering officer is also required to follow the Rules promulgated by IG under Section 69 of the Registration Act. Chapter VIII of the Rules deals with registration and examination of documents, whereas Chapter XII of the Rules deals with enquiry before registration and examination of executing parties. The Rules elaborately deal with all aspects of registration, including maintenance of registers, rectification of mistakes, fees payable for registration, maintenance and preservation of records, the method and manner of keeping the documents, and of late registration of documents through CARD[48]. The Rules also contain as many as ten appendices dealing with different types of registers and entries to be made therein etc.

Rule 26, to which a reference has been made by some of the learned counsel, gives the nature of examination to be made by the registering officer. The same reads as under.

Rule 26

(i) Every document shall, before acceptance for registration, be examined by the registering officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance,-

(a) that it has been presented in the proper office (Sections 28, 29 and 30);

(b) that the person is entitled to present it (Sections

32 and 40);

(c) that if it is a non-testamentary document and relates to immovable property, it contains a description of property sufficient to identify the same and fulfils the requirements of Rules 18 to 20.

(d) that if it is written in a language not commonly used in the District and not understood by the registering officer it is accompanied by a true translation into a language commonly used in the District and also by true copy (Section 19);

(e) that if it contains a map or plan, it is accompanied by true copies of such map or plan as required by Section 21(4);

(f) that if it contains no unattested interlineations, blanks, erasures or alterations, which in his opinion require to be attested as required by Section 20(1);

(g) that if the document is one other than a will it has been presented to within the time prescribed by Sections 23 to 26;

(h) that it bears the date of its execution and does not bear a date anterior to the date of purchase of stamp papers and the document is written on a date subsequent to the date of representation;

(i) that if the date is written in any document other than a will presented for registration after the death of the testator according to both the British and the Indian calendars, these dates tally; and

(j) that if the presentant is not personally known to the registering officer, he is accompanied by such identifying witnesses with whose testimony the registering officer may be satisfied.

(ii) If there are any informalities in presentation of a nature which can be remedied, for instance, non-compliance of the requirements mentioned in Clauses (a) to (f), (h), (i) and (j) of sub-rule (i) or this rule, the registering officer shall give the party such information as may be necessary and return the fees and the document with a view to the document being presented again in due form. The action of the registering officer shall be confined to advice and he shall not himself alter the document in any way.

The attention of this Court is also invited to Rule 58, which while laying down that it is not duty of the registering officer to enquire into the validity of the document, nevertheless casts a duty on the registering officer to

consider objections raised by anybody for the registration of the document. Rule 58 reads as follows.

> **58. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:**
>
> (a) that the parties appearing or about to appear before him are not the persons they profess to be;
> (b) that the document is forged;
> (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
> (d) that the existing party is not really dead as alleged by the party applying for registration; or

Though Rule 58 prohibits the registering officers from enquiring into validity of the document, Rule 26 read with Rule 58 reveals that it is always permissible for the registering officer to examine the document presented for registration as to whether the person who presented the document is entitled to present, whether such person is known to the officer or has been properly identified by the identifying witnesses, and also examine the document with reference to the various provisions referred to hereinabove. If any objection is raised, the registering officer has to consider whether the parties appearing before him are not the parties they profess to be, whether the document is forged and whether the document is presented without proper authority by representative, and whether the executing party is dead or not. In case, the registering officer is not satisfied, he can refuse registration.

Part XII of the Registration Act deals with refusal to register and Chapter XXIV of the Rules (Rules 161 to 164)

deal with “refusal register”. Under Section 71 of the Registration Act, the registering officer has to record his reasons for such refusal in book No.2 and endorse the words “registration refused” on the document and when asked for to furnish the reasons to the person executing or claiming the document. The reasons for refusal could be many and many more as seen from Chapter XXIV of the Rules. When the registration is refused, the person aggrieved has to prefer an appeal to the Registrar (Section 72) and if the appeal is also rejected, the remedy to an aggrieved person is to file a suit under Section 77 of the Registration Act for a decree directing the document to be registered by the registering officer.

When a document is presented for registration; whether such document is compulsorily registerable or not; the registering officer is bound to examine the document, conduct enquiry and satisfy himself as to the identity of the property, the identity of the person executing the document and as to the compliance with Stamp Act and other provisions of the Registration Act. Unless such an exercise is done, the registering officer cannot certify that the document is registered and only after such certification, the registration becomes valid. Sections 60 and 61 of the Registration Act deal with such situation. These provisions read as under.

> **60. Certificate of registration:-** (1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented fro registration have been complied with, the registering office shall endorse thereon a certificate containing the word ‘registered’, together with the number and page of the book in which the document has been copied.
>
> (2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements

referred to in Section 59 have occurred as therein mentioned.

> **61. Endorsements and certificate to be copied and document returned:-** (1) The endorsement and certificate referred to and mentioned in Section 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No.1 :
>
> Provided that the copying of the items referred to be may be done using electronic devices like scanner.
>
> (2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52.

The above provisions would show that unless and until there is compliance with the provisions of the Registration Act and also with the provisions of Sections 34, 35, 58 and 59 of the Registration Act, there cannot be any presumption about the regularity of the proceedings before the Sub-Registrar as contemplated under sub-Section (2) of Section 60. When once an endorsement is made as stipulated in Section 60 of the Registration Act, under sub-section (2) of Section 61, registration shall be deemed complete and the document so registered shall have to be returned to the person, who presented for the registration.

The Courts in India have taken the view that the non-compliance with the provisions of Sections 60 and 61 of the Registration Act is fatal defect and the same cannot be cured by Section 87 of the Registration Act, which declares that anything done in good faith, shall not be deemed invalid (See **Sharnappa v Pathru Saheb**[49]). A

contra view has also been taken by Madras High Court in **Padmapan Singh v III Joint Sub-Registrar**[50], wherein it was held that the endorsement of the word 'registered' on the document is a ministerial act and the omission to do it being a procedural defect, the omission would not invalidate registration. Here, a reference may also be made to Section 23-A of the Registration Act, which deals with Re-registration of the document. The same reads as under.

> **23-A. Re-registration of certain documents:-** notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present same, he shall proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:
>
> Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.

When a document is registered at the instance of a person not duly empowered to present the same, any person claiming under the document, may within four months from the date of knowledge that such document is

invalid, may present such document in accordance with the provisions of part VI (sections 32 to 35) of the Registration Act. In such event, registering officer after following the same procedure contemplated under the Act, can re-register the document as if it has not been registered previously. Thus, it is not possible to accept the submission of the learned counsel for petitioners that the registering officer ought to have rejected the documents submitted for cancellation of the sale deeds.

SUPPLYING CASUS OMISSUS

This Court has referred to relevant provisions of the Registration Act, which would reveal that under specific conditions only the registering officer can reject registration and if a document registered earlier is invalid, the registering officer can even re-register the document at the instance of the person who is entitled to execute and register the document. Further, as rightly pointed out by the learned counsel for the respondents, the registering officer can refuse registration only on grounds contemplated under law. When the legislature or subordinate legislature contemplates the circumstances and situations under which the registering officer can refuse registration, the Court cannot enlarge the scope by supplying *casus omissus.*

That, when there is a *casus omissus* in the statute, the Court while construing law, cannot supply omission by introducing new things is settled position in law. In **Illachidevi v Jain Society, Protection of Orphans India**[51], while reiterating that the Court cannot supply *casus omissus* and that the Court cannot read anything into the statutory provision, which is plain and unambiguous, the Supreme Court laid down as under.

> It is equally well settled that when the Legislature has employed a plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. Recourse to interpretation of statues may be restored only when the meaning of the statute is obscure. The Court is not concerned with the reason as to why the Legislature thought it

> fit to lay emphasis one category of suitors than the others. A statute must be read in its entirety for the purpose of finding out the purport and object thereof. The Court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it is held that the same would lead to an absurdity or manifest injustice.

In **Sri Ram Saha v State of West Bengal**[52], the appellant who was the owner of the garden land desired to plant hybrid saplings after removing worm affected and non-fruit bearing old trees in his land. When he was doing so, the land reforms officer prevented him from felling the trees. He challenged the same before the High Court of Calcutta. The Division Bench relied on Section 4B of West Bengal Land Reforms Act, 1955, which required Collector's permission for felling the trees by owners of non-forest private plantations and held that the appellant was entitled to cut one out of ten trees in two years. Before the Supreme Court, the appellant contended that in the absence of any provisions in the Act or in any other legislation, he cannot be prevented from felling trees in his garden land. It was also urged that the Court cannot supply *casus omissus* when there was no such prohibition for felling the trees from non-forest private land. The Apex Court referred to the decisions in **Commissioner of Sales Tax v Parson Tools and Plants**[53] and **Sankar Ram & Co., v Kasi Naicker**[54] and held that when the language of the statute is plain and unambiguous, *casus omissus* cannot be supplied. It was observed as under.

> It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, Courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a

> provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. **At any rate, in the guise of purposive interpretation, the Courts cannot re-write a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act but the Courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation.**
>
> (emphasis supplied)

Therefore, when the provisions of the Registration Act and Registration Rules elaborately deal with the circumstances and situations when the registering officer has to accept and register the documents, and/or as to when registering officer has to reject the documents for registration, it is not possible to hold as a general rule that whenever a cancellation deed is submitted, the registering officer is bound to reject the acceptance and registration of the same. Such interpretation would render Section 126 of TP Act (which enables the donor of a gift to cancel/revoke the same) ineffective. Secondly, there could be unimaginable number of circumstances when the executant himself on his own volition comes before the registering officer and desires to cancel the earlier document. As already pointed out supra, under Section 23-A of the Registration Act, the registering officer can re-register a document totally ignoring the earlier registration. Furthermore, under schedule 1-A to the Indian Stamp Act as amended by the Stamp (A.P.Amendment) Act, 1922, cancellation deed is one of

the legal documents recognized in law and a transaction for transfer of immovable property, is no exception.

EFFECT OF FRAUD ON PUBLIC AUTHORITIES

The question may also have to be examined from the point of view of administrative law. Needless to point out that administrative law, which also governs the exercise of power of judicial review by this Court is intended to see that all the public authorities, who are vested with powers discharge their duties and functions in accordance with rule of law, in a manner which is not illegal, irrational or improper. In post constitutional era, all the power exercised in the democratic governance flows from super statute i.e., the Constitution of India. There is no gain saying that all power is a trust and the trust should be discharged legally, fairly, impartially and with accountability. There is always presumption – though rebuttable; in law that all public functions are discharged for public good in accordance with law. If a public authority is induced to discharge the trust (exercise power) in a manner which is fraudulent, whether such public authority can recall/revoke earlier fraudulent order? Insofar as the judicial authorities and Courts are concerned, it is now settled law that every Court in judicial hierarchy has inherent power to revoke an earlier order obtained by fraud.

Fraud is a conduct which induces another person or authority to take a definite determinative stand in

response to such person's conduct by words or letter. In his treatise on the **'Law of Fraud and Mistake', Kerr** describes the elements of fraud as consisting in one man's endeavour by deception to alter another man's general rights; or in one man's endeavouring by circumvention to alter general rights of another or in one man's endeavouring by deception to alter another man's particular rights. Fraud and dispensation of justice by any authority – be it judicial or executive; do not go together. One species of fraud is misrepresentation. When the man misrepresents about some animate thing or inanimate thing which is quite opposite to the reality, he would be committing fraud by misrepresentation. The effect of fraud on the person or the benefit derived by such person is a cipher. "Fraud unravels everything and no Court can allow a person to keep an advantage obtained by fraud nor Judgment of a Court or an order of a public authority can be allowed to stand if the same is obtained by fraud". That was so held in a well known Judgment viz., **Lazarus Estates, Limited v Beasley**[55]. This is accepted in Indian Law as well.

In **Shrisht Dhawan v Shaw Brothers**[56], the Supreme Court held as under.

> Fraud and collusion vitiate even the most solemn proceedings in any Civilized system of jurisprudence. It is a concept descriptive of human conduct. *Michael Levi likens a fraudster to Milton's sorcerer, Comus,* who exulted in his ability to, ' wing me into the easy-hearted man and trap him into shares'. It has been defined as an act of trickery or

deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick… **From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it as false.**
(emphasis supplied)

In **S.P.Chengalvaraya Naidu v Jagannath**[57], quoting Lord Edward Coke (that 'fraud avoids all judicial acts, ecclesiastical or temporal',) Supreme Court of India emphasised that the Judgment or decree obtained by fraud on the Court is nullity and *non est* in the eye of law. It was also held that a decree/Judgment vitiated by fraud must be ignored treating it as nullity by every Court whether superior or inferior as "finality of litigation is not available when fraud is alleged". The following passage from the said Judgment is relevant here.

"…… The principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not. Process of the Court is being abused. Property-grabbers, tax-evaders,

> bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation….. **A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage…..**
>
> (emphasis supplied)

The principle is thus well settled that all the Courts and judicial forums in India have inherent power to recall or revoke the order passed earlier when it is shown that such order came to be passed by reason of fraud played on the Court. What is the effect of fraud in public administration when power is exercised by either administrative/executive authorities or statutory authorities? This was precisely the question considered by the Supreme Court in **Indian Bank v Satyam Fibres (India) Private Limited**[58]. While observing that the judiciary in India possesses inherent power under Section 151 of Code of Civil Procedure, 1908 (CPC), to recall its Judgment or order obtained by fraud on the Court, the apex Court ruled as under.

> This plea could not have been legally ignored by the Commission which needs to be reminded that **the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together** (*Fraus et jus nunquam cohabitant*). It has been repeatedly said that fraud and deceit defend or excuse no man (*Fraus et dolus nemini patrocinari debent*)….. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: *Benoy Krishna Mukerjee* v *Mohanlal Goenka*[59]; *Gajanand Sha* v *Dayanand Thakur*[60];

Krishnakumar v *Jawand Singh*[61]; *Devendra Nath Sarkar* v. *Ram Rachpal Singh*[62]; *Saiyed Mohd. Raza* v. *Ram Saroop*[63]; *Bankey Behari Lal* v. *Abdul Rahman*[64]; *Lekshmi Amma Chacki Amma* v. *Mammen Mammen*[65].) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (*Ishwar Mahton* v. *Sitaram Kumar*[66]) or to set aside the order recording compromise obtained by fraud. (*Bindeshwari Pd. Chaudhary* v. *Debendra Pd. Singh*[67]; *Tara Bai* v. *V.S. Krishnaswamy Rao*[68])

(emphasis supplied)

It is thus law of the land that even administrative authorities have inherent powers to recall or revoke their own orders if such order was obtained by playing fraud on such public authority. As a necessary corollary if some thing is done by public authority at the behest of a person who played fraud, the same public authority can nullify that was done as vitiated by fraud. As observed by the Supreme Court in **Indian Bank** (supra), inherent powers spring not from legislation but from the nature and conservation of the authorities, to enable them to maintain their dignity, secure obedience to process and ensure transparency. This Court is able to place its hands on two decisions of the Supreme Court, in which the administrative authorities rectified their earlier orders on the ground of fraud and the same received approval by the Supreme Court. These are **District Collector and Chairman, Vizianagaram v M.Tripurasundari Devi**[69] and **Union of India v M.Bhaskaran**[70].

In **District Collector and Chairman, Vizianagaram** (supra), persons who are not qualified were appointed as clerks in the District Administration ignoring the claims of those who were qualified. The Supreme Court held that appointment of an unqualified person amounts to fraud

and therefore, such appointments can be withdrawn. The relevant observations are as under.

> It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard to the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. **It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.**
>
> (emphasis supplied)

In **M.Bhaskaran** (supra), the respondents obtained employment in railway service by producing bogus and forged service cards as casual labour. Their appointments were subsequently cancelled, which was set aside by Central Administrative Tribunal, Ernakulam. Before the Supreme Court, however, removal of the railway employees was sustained on the ground that when appointment is obtained by fraud, it was open for the employer to terminate the employee. The law laid down by the Supreme Court is as under.

> Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what had happened in the present case. Once the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders or removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. **Therefore, even independently of Rule 3(1)(i) and (iii) of the rules, such fraudulently obtained appointment orders could be legitimately**

treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer.

(emphasis supplied)

It is therefore axiomatic that in India, the judicial, quasi judicial and administrative authorities have inherent powers to recall their orders or proceedings at a latter point of time if it is shown that such order was obtained by playing fraud and misrepresentation. The question of applicability of law of limitation to exercise such inherent power by the administrative authorities does not arise because fraud unravels every thing rendering a fraudulent order void and non-existent. To our mind, this principle in a different manner is also adumbrated in Section 21 of General Clauses Act, 1897 (Central Act No.X of 1897). Under the said provision, an authority who has power to issue, *inter alia* orders has also power to rescind such order. Further, the Rule 117 of Registration Rules permits the registration of cancellation deed in the same class of register book as that in which original document which it cancels has been registered. It is clearly not possible to accept the submission that registering officer has no power to accept and register a cancellation deed cancelling the earlier sale deed. Such an interpretation would not sub-serve public interest and if the registering officer is not given such power, it would further harm public interest and public policy. Nobody can deny that in a civilized society regulated by rule of law, the person with valid title must have the liberty to enjoy his property and such liberty cannot be deprived of without proper procedure under law.

In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be adding insult

to injury, if such person is asked to go to civil Court and get the subsequent sale deed cancelled or seek a declaration. Be it also noted that under common law, as discussed supra, the title of a person remains intact even if a stranger conveys that title to another stranger, which is ineffective. In the context of describing 'overriding interest' (interests, rights and powers not entered in the register), in **Halsbury's Laws of England** (Fourth Edition by Lord Mackay, volume 26 (reissue), the following is elucidated.

> **Para 786. Entry of existence of overriding interests.** Where the existence of any overriding interest is proved to his satisfaction or admitted, the registrar may, subject to prescribed exceptions, enter notice of the interest or of a claim to it on the register. This is a general provision which authorizes entry of notice of, among other things, the burden of an easement, right or privilege (being an overriding interest) acquired in equity by prescription if it be of such an estate and nature as is capable of taking effect at law.
>
> Any person desiring an entry to be made must make a written application giving particulars of the entry required. If the applicant is the proprietor of the land, or the liability, right or interest has been created by the proprietor, and if in either case there is no caution, restriction or inhibition on the register, an entry of the existence of the liability, right or interest may be made accordingly. In other cases evidence satisfactory to the registrar must be produced of the existence of the liability, right or interest. The proprietor of the land, if not the applicant, must have notice of the application; and the matter must be proceeded with as the registrar directs. Any entry of the existence of the liability, right or interest, if made, must be against the title in the charges register; and such entry must be made so far as practicable and convenient by reference to the instrument creating the right or by setting out an extract from it.
>
> No claim to an easement, right or privilege not created by an instrument may be noted against the title to the servient land if the proprietor of that land (after 14 days' notice or such longer period as the registrar deems advisable) shows sufficient cause to the contrary.

The person, who has *ex facie* right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by

fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large.

This Court accordingly holds on point No.1 against the petitioners.

PART - V

In Re Point No.2

Whether a writ petition is maintainable for invalidation of a cancellation deed or for cancellation of an instrument which purports to nullify a sale deed?

There are mainly three types of cases before this Court. In the first group of cases being W.P.Nos.22257, 22298, 23005 and 23008 of 2004, respondents 4 and 5 executed and registered cancellation deeds on the ground that the sale deeds executed by vendors in August, 1994, could not be finalized as sale consideration was not received by the vendors, that physical possession of the property was not delivered to the vendee and that the property was not mutated in the name of the vendee. It is also alleged that the earlier sale deed is sham and nominal. Be that as it is, though the cancellation deeds were executed on 20.08.2003, the writ petitions were filed after a period of one year in November, 2004. In the second group of cases, the sale deeds were cancelled by the vendors alleging that the owners executed general power of attorney in favour of two persons, that subsequently they cancelled the GPA in 1997 and that in spite of cancellation those persons

executed sale deeds in the year 2000 without any authority or entitlement to transfer the property. These are writ petition Nos.879 to 882 and 979 to 981 of 2006. In the third category of cases, being W.P.Nos.25661 to 25666 of 2005, the contesting respondents alleged that the person who executed sale deeds claiming to be GPA holder played fraud and misrepresented, that he has such authority or power to execute sale deeds and that the executant obtained GPA by playing fraud on the real owner.

Assuming that the petitioners filed suits before the civil Court for the relief, as is prayed herein before this Court, having regard to the pleadings, the civil Court has to necessarily frame the issues, which would be somewhat like this, namely,

(i) whether the sale deeds executed by the vendors in favour of the petitioners are valid and binding on the owners of the property; (ii) whether the GPA executed by the owner in favour of the persons, who executed sale deeds enables such GPA holder to convey or transfer the immovable property; (iii) whether the person who obtained GPA from the real owner has not played fraud and misrepresentation on the real owner; (iv) whether the sale deed executed is void or voidable as vitiated by fraud and misrepresentation; and (v) whether the cancellation deed is liable to be cancelled. There could be other incidental or related issues but mainly these will be issues in case the petitioners go to civil Court. This Court cannot resolve these issues in writ petitions. Each one of the issues requires evidence – both oral and documentary. Such evidence must be relevant and must relate to existence or non-existence of every disputed fact in issue. Mere pleadings either by way of plaint or written statement or for that matter, an affidavit would not be sufficient to decide the issue either way. In such a situation, an assumption that a vendor cannot cancel the sale deed or the

registering authority cannot accept and register the cancellation deed would be legally incorrect.

Conceptually, Law broadly consists of private law and public law. All statutes and majority of common law principles regulating *inter se* human relations are often referred to as private law. The principles of law or statute law governing relations between the individual and public authorities (the State, the Government, quasi-Government, statutory and administrative authorities and bodies), is often referred to as public law. In Common Law jurisdictions in one form or the other, the Courts have developed the principles of public law containing normative standards though not always entrenched. These principles have been evolved to ensure that every public body acts within law in a manner, which is not arbitrary and unreasonable. The power of judicial review, therefore, is the process by which statutory Courts – generally constitutional Courts; review functions and activities of public authorities in the field of public law. What are the authorities and what are the functions of such authorities amenable to the power of judicial review is always a question of great significance, with which the Courts perennially grope with. There could be public authorities with wide variety of private law functions as there could be private persons discharging public functions. In the former case, they cannot be dragged to public law Courts and in the latter case they cannot escape scrutiny by public law Courts.

It is misnomer to assume that all statutory authorities like registering authority, always discharge public law functions. Some of the functions like registration of documents/ instruments may be in exercise of statutory power but such functions may or may not strictly are concerned with public law. For instance, a registration of gift deed executed by donor in favour of donee is only pursuant to statutory power but the same does not involve

any public law function. Similar is the case in the event of registration of a sale deed, mortgage deed or licence deed, compromise deed and/or cancellation of any of these deeds.

Judicial review has its own limitations and all decisions of public bodies are not amenable to this public law power. Nor is it permissible for a reviewing Court to deal with matters which lack adjudicative disposition by reason of prerogative nature of the power exercised by the public authority or exclusive entrustment of powers to a specialized body of the State. As the legislative and executive wings are prohibited from usurping the judicial functions of the State, the judiciary is not expected to discharge legislative and executive functions. The exposition of the principles of judicial review by Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service**[71] has attained the classical status of law of judicial review. While grouping the grounds of judicial review into three broad points, namely, illegality, irrationality and impropriety, the noble Lord observed.

> For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of 'the prerogative'.

In a recent Judgment in **State of U.P. v Johri Mal**[72], the Supreme Court of India reiterated the scope and limitations of judicial review in the following terms.

> The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of

India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeking that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies.

Apart from the limitations pointed out by the Supreme Court, the power of judicial review is not available when there is an effective alternative remedy to the aggrieved person. When granting redressal involves adjudication of disputed questions of facts, which require adducing of evidence by the parties, then also ordinarily an application for a judicial review is not accepted. (See **Whirlpool Corporation v Registrar of Trade Marks**[73]). There is justification for the principle. Clive Lewis in **'Judicial Remedies in Public Law'** (first edition 1992, Sweet & Maxwell, pp.229 and 230), explained the rationale for the principle as under.

> The rationale for the exhaustion of remedies principle is relevant to the scope of that principle. A two-fold justification has been put forward. First, that where Parliament has provided for a statutory appeals procedure, it is not for the courts to usurp the functions of the appellate body. The principle applies equally to bodies not created by statute which have their own appellate system. Secondly, the public interest dictates that judicial review should be exercised speedily, and to that end it is necessary to limit the number of case in which judicial review is used. To these reasons can be added the additional expertise that the appellate bodies possess. In tax cases, for example, the appellate body, the General or Special Commissioners, have wide experience of the complex and detailed tax legislation. In employment cases, for example, the system of Industrial and Employment Appeal Tribunals may be better equipped to deal with industrial issues than the High Court.

Whether the vendors file suits for cancellation of the instrument under Section 31 or for declaration of title under Section 34 or whether vendees file suits cancellation of the cancellation deed, there are bound to be allegations of fraud, misrepresentation and illegality by both the parties. An elaborate procedure is available under Code of Civil Procedure, 1908 (CPC), Evidence Act, Specific Relief Act and Transfer of Property Act, which has to be followed by a civil Court. Certain issues cannot be adjudicated by resorting to summary procedure. In a writ petition, this Court decides the issues based on the affidavit evidence. Whenever affidavit evidence is not sufficient and further probe is required in the sense that persons who swear affidavits need to be cross-examined and confronted with documentary evidence, a writ petition is not a proper remedy. In a sale transaction, it is essentially a contract between two persons and if one person after conclusion of the contract goes back and makes attempt or purports to make an attempt to deny the benefit of the contract of the other party, the remedy is only in the civil Court.

Registration Act would show that the registering authorities are creations of statutes and they are

conferred powers under the statute to enable them to discharge statutory duties. A registering authority has a role of a catalyst in the sense of legitimizing certain transactions by registering as per law. By the action or inaction of registering authority, there is no involvement of the State or the Government as such, except to the extent of charging registration fee for the service of registration as well as keeping the registers. Therefore, any instrument between the two persons, is governed by private law principles and registration thereof does not play any pervading role in rendering the transaction legal or otherwise. For instance, if a contract is prohibited by reason of its being against public policy, the registration of the document evidencing such contract does not render it valid. Similarly, if two joint owners of immovable property decide to exchange properties and do so without going to registering authority, no law prohibits such exchange. However, if either of them wants to produce such deed as evidence, by reason of Section 49(c) of Registration Act, the same cannot be received as evidence of transaction between them. The registration in certain circumstances is notice of a transaction relating to immovable property to a limited extent. Therefore, Registration Act and registering authorities acting thereunder mainly deal and regulate transactions in the realm of private law. For this reason also, the writ petition cannot be entertained.

At this stage, cases decided by this Court may be noticed. In these, a view has been taken that when once a document is registered by registering authority, the same can be nullified only by the civil Court and that at the time of registration, the registering authority has no power to make enquiry as to the competence or otherwise of the person presenting the document for registration. In **Property Association of Baptist Churches** (supra), one of us (Justice V.V.S.Rao) was dealing with a case wherein the action of the registering authority was challenged in

registering the documents in respect of specified land. The case was founded on an allegation that the land was being alienated by encroachers clandestinely though they have no title to the property. The writ petition was opposed *inter alia* on the ground that registering authority has no jurisdiction to refuse registration of the documents. This Court referred to part XI and Section 77 of the Registration Act as well as Rule 58 of the Registration Rules and dismissed the writ petition observing as under.

> A reading of the above provisions would show that the power of the registering officer is limited to enquire into the validity of the document brought to him for registration or to enquiry into any written or verbal protest against the registration of a document based on the ground that the executing party has no right to execute the document. The limited power of the registering officer to enquire into objections that the executing party had no right to execute document get extinguished the moment the document is registered. No such power inheres in the registering officer or the District Registrar to cancel the sale deed, unless another document for cancellation is presented with proper stamp duty and registration charges. A party aggrieved by a registered document on conveyance has to file civil suit seeking appropriate declaration under Section 34 of the Specific Relief Act, read with Article 59 of the Schedule under the Limitation Act, 1963. The writ petition is not a proper remedy.

Following the decision in **Property Association of Baptist Churches** (supra), another learned single Judge in **Karimnagar Education Society, Karimnagar v The District Registrar, Registration & Stamps,** Karimnagar,

an unreported Judgment in W.P.No.14007 of 2004, dated 18.08.2004, dismissed the writ petition observing as under.

> This Court in **Property Association of Baptist Churches** (supra) categorically held that the limited power of the registering officer to enquire into the objections that the executing party had no right to execute document get extinguished the moment the document is registered. No power inheres in the registering officer or the District Registrar to cancel the deeds, unless another document is presented with proper stamp duty and registration purpose. A party aggrieved by a registered document on conveyance has to file a civil suit seeking proper declaration under Section 34 of the Specific Relief Act.
>
> In the present case, earlier Gift Deed, which was registered in favour of the petitioner was cancelled through Cancellation Deed and presented for registration and the same was registered. The moment it is registered, the remedy of the petitioner, if any, is to approach the civil court seeking proper declaration.

In **K.Gopal Reddy v Secretary and others**[74], another learned single Judge allowed the writ petition restraining the vendors from alienating and conveying the immovable property in favour of others. The learned Judge observed as under.

> **If the cancellation of sale deed is by a private individual, it hardly needs any emphasis that the necessary forum to adjudicate upon it is a Civil Court. However, where such action is resorted to by a State or its agency, the exercise partakes an administrative character.** An administrative or state agency is not accorded the same latitude as a private individual in its functioning. Its acts and omissions are required to be in accordance with law, reasonable and not arbitrary…. It hardly needs any emphasis that wherever a transaction of sale, mortgage or other transfer takes place in accordance with law, it can be annulled only with the participation of parties to such transaction. If one of the parties does not co-operate for such annulment or cancellation, the only course open to the party intending such cancellation is to have recourse to an action under Section 39 of the Specific Relief Act. If unilateral cancellation of sale deeds or other instruments is permitted, there is every danger of a party to a transaction becoming an ultimate Judge in his own cause. In such cases, the sales or other transactions brought about in accordance with law, loose their significance and have to depend for their efficacy or enforceability on the

> mercy of the person who transferred the rights under the documents.
>
> (emphasis supplied)

Reading the above observations made by the learned Judge, this court is not able to countenance the submission of the learned counsel for the petitioners that the said Judgment is an authority in support of the contention that a cancellation cannot be registered. Indeed as held by learned Judge, if a cancellation deed is executed and registered by private individual, the remedy is only civil Court and a writ petition would not lie. Another aspect of the above decision is that if there is participation by all the parties to the document, there can be a cancellation deed and according to learned Judge, unilateral cancellation cannot be permitted. Be that as it is, the decisions in **Karimnagar Education Society** (supra) and **K.Gopal Reddy** (supra) were the subject matter of writ appeals. Writ Appeal No.1486 of 2004 was filed against **Karimnagar Education Society** (supra) and writ appeal No.972 of 2004 was filed against **K.Gopal Reddy** (supra). The Division Bench, by order dated 11.10.2004, dismissed the writ appeal No.1486 of 2004 laying down as under.

> The short question that falls for consideration is whether the registering authority is duty bound to make any enquiry as such before registering the deeds of cancellation. The learned counsel for the appellant very fairly stated before us that there is no provision, which enables or obligates the registering authority to make any such enquiry before registering the cancellation deed. In such view of the matter, in our considered opinion, the public law remedy invoked by the appellant herein is ill suited to resolve the controversy between the appellant and the

> third respondent. The dispute essentially is between the appellant and the third respondent. The third respondent having executed the gift deed appears to have cancelled the document and according to the appellant, without any reason or justification. That dispute lies essentially in the realm of private law, which is required to be adjudicated only in a common law proceeding. … It is not as if the appellant is left without any remedy. He is always entitled to seek proper declaration under Section 34 of the Specific Relief Act as has been rightly observed by the learned single Judge. We accordingly find no merit in the appeal and the same shall accordingly stand dismissed.

The writ appeal filed against **K.Gopal Reddy** (supra) was allowed by order, dated 11.10.2004, following writ appeal No.1486 of 2004. However, when two writ petitions being W.P.Nos.23005 and 23008 of 2004 were listed before the learned single Judge, who decided **K.Gopal Reddy** (supra), the matters were referred to Larger Bench observing that so as to protect the interests of both the parties whenever a deed of cancellation is presented, there should be compliance with Section 32-A of the Registration Act which mandates compulsory affixing of photographs of the buyer and seller, if the document is a sale deed.

After considering the background of these cases, we hold that the decision of the Division Bench in writ appeal No.1486 of 2004, dated 11.10.2004, is correct exposition of law having regard to various provisions of Registration Act and TP Act, which have been analysed while considering point No.1. We, therefore, hold that whenever a person is aggrieved by a cancellation deed, the remedy is to seek appropriate relief in the civil Court and writ

petition is not proper remedy. There are other reasons as well, as discussed below.

As seen from the counter affidavits filed by the contesting respondent, extremely serious questions regarding right and entitlement to immovable property have been raised. With the affidavit evidence, which by no means can be treated as elaborate, if this Court decides such serious questions, it would certainly prejudice the rights of the respondents and they would be deprived of the remedy before hierarchy of civil Courts. In the considered opinion of this Court, the jurisdiction under Article 226 of Constitution of India cannot be exercised if the order passed by this Court cannot be carried out without prejudicing the rights of the others. As observed by the Supreme Court in **A.R.Antulay v R.S.Nayak**[75], "it has been said long time ago that "*Actus Curiae Neminem Gravabit*", the act of the Court shall prejudice no man and that this maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law". Be it noted that even according to the petitioners, the sale deed obtained by them is valid till it is cancelled by the civil Court. Therefore, even if the cancellation deed is allowed to remain, no prejudice would be caused to the petitioners. It is also pointed out to us by the learned Government Pleader that as per the instructions issued by the IG under Section 69 of the Registration Act, the registering authority is issuing a notice to the earlier purchasers and also endorsing on the cancellation deed that such cancellation deed does not alter the rights.

That disputed questions of fact cannot be gone into in a writ petition is axiomatic. A copious reference to case law is not necessary. As pointed out earlier, among many; it is one of the limitations on the exercise of power of judicial review. A reference may be made to two decisions of the Supreme Court in this context. In **State**

of Bihar v Jain Plastics and Chemicals Limited[76], the law was summarized as under.

> It is to be reiterated that writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. .....It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.

In **Orissa Agro Industries Corporation Limited v Bharati Industries**[77], after referring to **State Bank of India v State Bank of India Canteen Employees Union**[78], **Chairman, Grid Corporation of Orissa v Sukamani Das**[79] and **National Highways Authority of India v Ganga Enterprises**[80], while reminding that where the dispute involves questions of fact, the matter ought not to be entertained under Article 226 of Constitution of India, the apex Court observed as under.

> Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise

jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and **if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinized and in such a case writ jurisdiction should not be exercised.**

(emphasis supplied)

PART – VI

CONCLUSION

As already referred to in these cases, there are serious disputed questions of fact regarding the allegations of fraud and misrepresentation played by the vendors as well as vendees against each other, there are also questions raised regarding the competence and entitlement of a person executing the document. In some cases (W.P.Nos.22298, 23005 and 23088 of 2004), the sale deeds were cancelled some time in August, 2003, but the writ petitions are filed with considerable delay. In some cases, there are complaints of cancellation of deeds/instruments after lapse of ten years after execution of the original deed. In the opinion of this Court, these are the matters which are to be decided based on evidence and the affidavit evidence available on record is hardly sufficient to decide the issues in such a manner to meet the ends of justice. Indeed, in some of the matters (W.P.Nos.879, 880, 881, 882, 979, 980 and 981 of 2006), suits are already filed for injunction and the orders of *status quo* are in force. Therefore, this Court is of

considered opinion that the parties should be relegated to the civil Court to file suit either under Section 31 or under Section 34 of Specific Relief Act. Point No.2 is answered accordingly.

In the result, for the above reasons, all the writ petitions are dismissed subject to observations made hereinabove. Be it noted, as and when any suits are filed, the civil Court has to decide the issues regarding disputed questions of facts without in any manner influenced by the observations made in this Judgment. There shall be no order as to costs.

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(BILAL NAZKI,J)

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(V.V.S.RAO,J)

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(CHANDRAIAH,J)

.07.2006
pln
Note: LR copy be marked.
(By order)
pln

THE HON'BLE MR. JUSTICE BILAL NAZKI

THE HON'BLE SRI JUSTICE V.V.S.RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NOS.9512 OF 2003; 22257, 22298, 23005 AND 23088 OF 2004; 1082, 3679, 12958, 21356, 21357, 24962, 24972, 25661, 25662, 25663, 25664, 25665,

25666, 26148 AND 26149 OF 2005; 879, 880, 881, 882, 979, 980 AND 981 OF 2006

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COMMON ORDER (Per the Hon'ble Sri Justice G.Chandraiah)

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I am in complete agreement with the detailed judgment prepared by my learned brother Justice V.V.S. Rao. However, I would like to reiterate that there is no specific prohibition under the Registration Act, 1908 (for short 'the Act') to register a deed of cancellation. The registering officer can refuse registration in the situations arising under Sections 19 to 22, 32 and 35 and the relevant rules are Rules 26, 58 and 117. But in all other cases where the conditions under the Act i.e., Sections 17 and 18 of the Act are fulfilled, the registering officer is bound to register the document and it is not in dispute that the cancellation deed fulfills the conditions for the purpose of registration. However, the Act does not permit the registering officer to enquire into the title of the party presenting the document for registration and the situations mentioned in the above said provisions under which the registration can be refused are for different purpose and only under those contingencies he can refuse. This court cannot enlarge the scope of these provisions under the guise of interpretation of statute. Further when there is no prohibition under the Act the registering officer has to register the documents presented for registration in

accordance with law and this court by judicial interpretation cannot impose the same into the statute. It is well settled that what has not been provided for in a statute cannot be supplied by Courts and to do so will amount to legislating which is not the function of the Courts.

2. The main grievance of the petitioners is that by permitting the registration of cancellation deeds, the vendors of immovable property are misusing the provisions and allowing it would amount to abuse of process of law. This contention cannot be countenanced for the reason that admittedly there is no prohibition under the statute and if there is misuse, it for the legislators to make necessary amendments and this court under Article 226 of the Constitution of India cannot step into the shoes of the legislators. At this juncture it is necessary to look into the judgment of the Constitutional Bench of the Apex Court in ***PADMA SUNDARA RAO v. STATE OF T.N.***[81] The facts in the said case reveal that a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued and a declaration under Section 6(1) of the said Act was made and published in Official Gazettee within the period of three years prescribed under the proviso thereto, which was subsequently substituted by Act 68 of 1984. The notification has been quashed by the

High Court. The question that arose for consideration before the Apex Court was whether after quashing of the notification under Section 6 of the said Act, fresh period of limitation was available to the State Government to issue another notification under Section 6. It was contended on behalf of the appellant therein that the declaration under Section 6 has to be issued within the specified time and merely because the court has quashed the declaration concerned, an extended time period is not to be provided. In other words, the controversy was whether the court can extend the period of limitation prescribed by the statute on the ground that the earlier notification was quashed by the Court. The Apex Court answered the issue in the negative and made the following observations with regard to interpretation of statutes:

"12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. . .

13. *In D.R.Venkatchalam v. Dy. Transport Commr* (1977)2 SCC 283 it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

14. While interpreting a provision the court only interprets the law and cannot legislate it. ***If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.*** (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* (2000)5 SCC 515.) . ."

(Emphasis added)

3. Coming to the present case, as stated above, there is no prohibition under the Act for the vendor to get the cancellation deed registered. Therefore, this court cannot read the same in the statute. However, the aggrieved party can always approach competent civil court. The learned Government Pleader submitted that even if the cancellation deed is registered, as per the instructions given by I.G. under Section 69 of the Act, the registering officer is issuing notice to the earlier purchaser and also endorsing on the cancellation deed that such cancellation deed does not alter the rights. Further some of the parties filed suits and obtained status quo orders.

4. It is also to be seen that there are many disputed questions of fact, which this court cannot delve under Article 226 of the Constitution of India. Further it is not as though the petitioners are without any remedy, they have alternative remedy before the competent civil court, which will be in a position to adjudicate based on the evidence both oral and documentary available on record and, therefore, when an alternative and efficacious remedy is available, writ jurisdiction cannot be invoked.

5. For the foregoing reasons, the writ petitions deserve to be dismissed as opined by the learned brother Justice V.V.S.Rao.

BILAL NAZKI,J

V.V.S.RAO,J

G.CHANDRAIAH,J

DATE: .10.2006 AVS

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[1] 2004 (1) ALT 174

[2] AIR 1950 ALLAHABAD 632

[3] AIR 1927 ALLAHABAD 361

[4] AIR 1991 AP 50

[5] AIR 1974 SC 1924.

[6] 12 Bom.L.R.940.

[7] (2004) 8 SCC 556

[8] (2003) 5 SCC 705.

[9] AIR 2005 SC 3401.

[10] AIR 1995 PUNJAB & HARYANA 86.

[11] AIR 1966 MP 20.

[12] AIR 1961 SC 787.

[13] 2001 (1) ALD 86

* In W.P.Nos. 22298, 23005 and 23088 of 2005, the background facts are the same.

[14] 2004 (1) ALT 174

[15] AIR 1960 Madras 1 (FB)

[16] AIR 1966 Madhya Pradesh 20 (FB)

[17] AIR 1968 SC 1361

[18] AIR 1969 SC 244

[19] AIR 1970 Orissa 22

[20] AIR 1970 Rajasthan 171

[21] AIR 1995 Punjab and Haryana 86

[22] (2003) 5 SCC 705

[23] (2004) 3 SCC 553

[24] (2005) 1 SCC 496

[25] (2004) 2 SCC 150

[26] 2004(4) ADL 371 (DB)

[27] AIR 2005 SC 3401

[28] 2006(1) LS 174

[29] AIR 1966 SC 543

[30] (1981) 2 SCC 246 = AIR 1980 SC 1717

[31] Section 23 enumerates considerations and objects which are lawful or which are not lawful.

[32] 23 ILR 375 (Bombay)

[33] 13 ILR 549 (Madras)

[34] L.R., 15 I.A., 86

[35] AIR 1960 Madras 1 (FB)

[36] AIR 1972 Allahabad 376

[37] 'A Selection of Legal Maxims': Herbert Broom; Tenth edn., (1939), Sweet & Maxwell, pp.528-529

[38] ibid pp.497; 540

[39] 2005 (5) ALD 658

[40] AIR 1974 SC 1924

[41] AIR 1919 PC 79 (at p 81)

[42] AIR 1921 PC 112 (at pp 116-117)

[43] Sixth edn., West Publishing Company, 1990

[44] Words & Phrases (permanent edition): Vol.35A: West Publishing Company)

[45] The Law Lexicon by P Ramanatha Aiyar, (reprint edn., 1993, p.1053)

[46] 25 IC 649

[47] 7 IC 359 = 11 Cr.L.J. 453

[48] Computer-Aided Administration of Registration Department.

[49] AIR 1963 Mysore 335

[50] AIR 1967 Madras 432

[51] (2003) 8 SCC 413 (para 44) = AIR 2003 SC 3397

[52] (2004) 11 SCC 497 (para 19)

[53] (1975) 4 SCC 22

[54] (2003) 11 SCC 699

[55] (1956) 1 All ER 341

[56] (1992) 1 SCC 534

[57] (1994) 1 SCC 1

[58] (1996) 5 SCC 550 (paras 20 and 23)

[59] AIR 1950 Cal 287

[60] AIR 1943 Pat 127 = ILR 21 Pat 838

[61] AIR 1947 Nag 236 = ILR 1947 Nag 190

[62] ILR (1926) 1 Luck 341 = AIR 1926 Oudh 315

[63] ILR (1929) 4 Luck 562 = AIR 1929 Oudh 385 (FB)

[64] ILR (1932) 7 Luck 350 = AIR 1932 Oudh 63

[65] 1955 Ker LT 459

[66] AIR 1954 Pat 450

[67] AIR 1958 Pat 618 = 1958 BLJR 651

[68] AIR 1985 Kant 270 = ILR 1985 Kant 2930

[69] (1990) 3 SCC 655

[70] 1995 Supp (4) SCC 100

[71] (1985) AC 374

[72] (2004) 4 SCC 714 (para 28) = 2004 AIR SCW 3888

[73] AIR 1999 SC 22

[74] 2004 (2) ALD 317

[75] (1988) 2 SCC 602 = AIR 1988 SC 1531

[76] (2002) 1 SCC 216 = AIR 2002 SC 206

[77] (2005) 12 SCC 725

[78] (1998) 5 SCC 74

[79] (1999) 7 SCC 298

[80] (2003) 7 SCC 418

[81] (2002)3 SCC 533